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JEEVADHARA

The Fulness of Life

THE NEW CODE

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Editorial

It is about a year since the New Code of Canon Law for the Western Church was promulgated. Notwithstanding the remarkable legal acumen of the Church law-makers, Church law always remains defective and in need of ongoing revision. The pilgrim nature of the Church, the imperfect articulation of laws, the contingencies of history and so on perforce give a provisional character to all Church laws. There is thus no such thing as a 'definitive' formulation of laws for all times.

There is what we call the legitimacy or reasonableness of law. Law enjoys formal legitimacy when it is laid down by a legitimate authority and material legitimacy when it meets the requirements of justice and common good. Both these legitimacies must be verified if there is to be a true law. A law is morally justified only if it is an exercise of the lawgiver's specific function of service to the people. The power of the lawgiver is limited by common good. The freedom of persons is not to be restricted unless it is required by the protection or promotion of general welfare.

A law has to be reasonable if it is to be valid. Its reasonableness consists in the value it mediates. It is an invitation to man to promote value in freedom. A law that is not based on value is no real law and has no binding force. There is the constant danger of laws being divorced from the values which they should embody and safeguard, and of their being allowed to degenerate into sterile formulas. Those who are anxious about the fulfilment of formulas, irrespective of whether they mediate value or not, slip inevitably into legalism. Only a living contact with values and an honest discernment of them can save us from the peril of legalism. The articles in this issue of *Jeevadhara* are meant to help us to this end.

Jacob Chamakala after surveying the OT and NT understanding of law concludes that it was love issuing from God that initiated and permeated the history of salvation. This love of God was "made flesh" in the person of Christ. Now, the Church should incarnate that very same love of Christ, and her legislations should be a witness and an expression of her "covenantal love" for Christ. Swami Vikrant writing on "Theology of Hindu Law" feels that there cannot be a Catholic or universal canon law. The principle of pluralism demands the emergence of several canon laws. The new Hindu Code could be a good paradigm for the Church in India to evolve a canon law for India. The next contributor Valerian D'Souza discusses the ecclesiology of the new code and its implications to the Church in India. According to him, the great need for the Church in India today is a spiritual renewal. We have lots of institutions and activities. But all this is just one dimension of the Church, its horizontal dimension. The ecclesiology of the new code calls for a greater emphasis on the vertical dimension of the Church. Writing on religious life in the new code, George Lobo finds the main pre-occupation of the drafting commission to be to strike a balance between the peculiar charism and autonomy of religious institutes, and their deeper insertion in ecclesial life, both at the local and universal level.

Felix Podimattam

Law and the Bible

"……O , how I love thy law!
It is my meditation all the day.
Thy commandment makes me wiser than my enemies,
for it is ever with me…

Through thy precepts I get understanding;
therefore I hate every false way.
Thy word is a lamp to my feet
and a light to my path…

Seven times a day I praise thee
for thy righteous ordinances.
Great peace have those who love thy law;
nothing can make them stumble…"

(Ps. 119:97-98, 103-105, 164-165)

This prayer of the Psalmist rightly pictures the centrality of the one single great force that shaped the Israelite society and the lives of its individuals. Here immediately we encounter the most widespread and basic category which has been employed to describe the nature of the material which the Old Testament contains. This is that of 'law' or more precisely *torah*. Law was the eternal expression of the divine act of will revealed to the people of God by a privilege of God's grace. It shaped the history and religion of Israel and was of decisive influence in the New Testament as well. Hence, the present study centres on the very important concept of law in the Bible, with a view to finding out its main trends and thrusts.

* * *

The basic term for 'law' in the O. T. appears to be *torah*. Apart from the term *torah* no single Hebrew word is widely translated 'law'. The most common designation for Israelite law are *miswah*, "commandment" (Gen. 26:5; Exod. 15:26); *dabar*, "word" (Exod. 34:28; Deut. 4:13); *hoq, huqqah*, "decree", "precept" (Amos 2:4); *mispath*, "judgment", "ordinance", "custom" (Exod. 21:1). Hence fundamental to the understanding of the biblical concept of law is the examination of the term *torah*.

The word *torah* occurs very frequently in the Old Testament to denote "instruction of various kinds". Its etymology is contested, and two possibilities are suggested. It is derived either from the verb *horah* with the meaning "to direct, aim, point out", or it is a Hebrew counterpart of the Babylonian word *tertu* meaning "oracular decision, or divine instruction"[1]. Most probably the former is correct, in which case the word means "guidance, instruction". In that case *torah* (mostly used in the singular) originally meant an instruction from God, a command for a given situation. Instruction for given situations was also given by prophets (Isa. 1:10; 5:24 etc.), by priests (Hos. 4:6; Jer. 2:8; Deut. 17:9-11; Ezek. 7:26) or by a judge (Deut. 17:9-11f.). The prophets threatened judgment on those priests and prophets who issued their own instruction without having received it from Yahweh (Jer. 2:8; 8:8; Zeph. 3:4; Ezek. 22:26).

Further, human counsel given by a teacher of wisdom was also called *torah* (cf. Prov. 13:14; 28: 4. 7. 9). However, in the O. T., the word is predominantly used for religious instruction and especially for the kind of instruction which could be given by a priest (cf. Jer.18:18). We find in the O. T. that others besides priests give *torah*. However, a word of *torah* was particularly the kind of

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1. The meaning and the use of *torah* is extensively discussed by G.A. Ostborn, *Torah in the Old Testament. A Semantic Study* (Lund' 1945),

instruction that the ancient Israelite expected to learn from a priest, so that it was a religious direction, the ultimate source of which was to be found with God.

As to the kind of rulings that might be the subject of such priestly *torah* can only be inferred from the particular duties and concerns which fell to the priest to take care of. Obviously matters concerning the protection of holiness, the obligations of worshippers etc. formed part of it. The fact that much wider range of concerns dealing with the health of the community, the avoidance of unclean foods, and even sexual and social manners are dealt with, cautions us against drawing any very narrow conclusions about the nature and scope of priestly *torah*. Further, the word *torah* was extended to cover matters of traditions of the past which were thought to be naturally in the custody of the priest as the guardian of the community's lore. In conclusion, the word *torah* should not be applied specifically to juridical traditions in the narrower sense of "law" nor is it a broad word for general ethical admonition, although it could include this.

It is only after the Deuteronomic reform that phrases such as "the law of Yahweh" become widespread, epitomizing the laws in general, and without any further qualification or any enumeration of the individual laws involved. Regarding the formation of the O.T., a very fundamental development is found in the book of Deuteronomy, where *torah* comes to be applied to the law-book itself: "This is the *torah* which Moses set before the children of Israel; these are the testimonies, statutes, and the ordinances, which Moses spoke to the Israelites when they came out of Egypt....." (Deut. 4:44-45). This summarising introduction to the central part of the book of Deuteronomy is particularly helpful to us in showing the way in which the idea of *torah* was developed and extended.

There is also a very marked effort to achieve comprehensiveness, as is shown by the definition which follows and the wider range of rulings and injunctions which the book contains. The definition in terms of testimonies,

statutes and ordinances is noteworthy for the way in which it brings together words denoting laws, decrees, and admonitions under one all-embracing category. From this time onwards *torah* came to signify the most comprehensive type of instruction in which legal, cultic, and more loosely social obligations were brought together. To obey *torah* was to satisfy the demands of religious, social and family life in the broadest possible compass. Even political obligations seem to be included.

Perhaps, more surprising in a document of this kind, which is concerned to spell out precisely the nature of the individual's responsibilities and obligations, is that moral attitudes are commanded, particularly those of love and respect (cf. Deut. 15:7-11). This is carried over into the religious realm even more prominently so that it becomes a prime duty to love God, and to feel and express gratitude to him (cf. Deut. 6:5; 9:4-5). Beyond these broad ethical admonitions, we find that a wide area of life comes under the heading of *torah*. Obligations for military service, the care of buildings, the conservation of the environment and the protection of slaves are all included (cf. Deut. 20:1-10; 21:10-17; 22:6-7; 23:12-14).

Regarding the threat of punishment for disobedience to particular *torah*, two aspects are to be specially noted. First, the entire society is involved in dealing with all offences against the injunctions laid down. Hence religious offences, especially apostacy, are to be dealt with by the most severe sanctions (Deut. 13:5.8-11). Secondly, over and above the particular punishments and sanctions that society could impose, there stood a larger sanction. This is that Israel would have shown itself to be disobedient to the covenant with Yahweh, and would forfeit all its privileged status as his chosen people.

Hence, the book of Deuteronomy places the notion of *torah* in a wider theological context. Thus *torah* is not mere laws which through social pressure and the good sense of the hearers the Israelites are to observe. It is

directed specifically to Israel and is the *torah* of the covenant by which Israel's relationship to God is governed. It is as a consequence of belonging to the elect people of Yahweh that the Israelite finds himself committed in advance to obedience to *torah*. Hence, he found that it was imperative for him to know *torah*, to understand it correctly, and to be reminded of it regularly, if he were to remain a member of his people. Furthermore, it was upon the sincerity and willingness of each individual Israelite that the well-being of the whole nation was made to depend.

Later, the term *torah* came to be applied to the whole of Pentateuch; and still later to the whole of O.T. However, in common use and particularly in Judaism, *torah* means the Pentateuch. The testimony of all biblical writers is unanimous in assigning to Moses a unique place in the promulgation of the divine law. Even laws which actually developed centuries later were traced back to the events at Mount Sinai or to the plains of Moab, where God communicated with Moses face to face.

Although this judgment is historically erroneous, its theological meaning is to be noted. The covenant between God and Israel at Sinai (Exod. 19-24) provided the foundation for all Israelite law. *Israelite law is*, accordingly, *Covenant law*.

Law has as its object the maintenance of life in community and rests upon an understanding of the meaning of life in community. The meaning of Israel's life is provided by the saving action of God in her midst. With this God Israel entered into a covenantal relationship. The vertical dimension of this covenantal relationship was so powerful that it permeated every aspect of Israelite life. The social orientations of covenant laws themselves emerged from their divine dimensions. This aspect is evident especially in a comparison of the Israelite laws with other ancient Near Eastern law codes.

Thus, since the discovery and publication of the Hammurabi Code, it has been acknowledged that the covenant Code is remarkably similar in content and form to the laws of ancient Mesopotamia[2]. Now, Sumerian, Babylonian, Assyrian, Hittite and Canaanite codes are further shedding their light on the Mosaic laws. Of special mention are the laws of Lipit-Ishtar king of Isin, in central Babylonia dating around 1875 B. C., and even the earlier laws of Eshnunna, an ancient city north east of modern Baghdad. In addition to these codes must be mentioned the old Babylonian and Assyrian tablets from Kanish in Cappadocia (19 cent B. C.). A wealth of legal material belonging to the 15th cent B. C. has also been recovered at Nuzu, near modern Kirkuk, since 1925. Assyrian laws[3] have been recovered from the city of Asshur on the Tigris, much of which is coming from the period of Tiglathpileser I(c. 1110 B C.)[4]. Hittite laws[5] also have come to light and date a century or two earlier than the laws of Tiglathpileser. There is a basic unity among the laws of the ancient world. The civil legislations of the O.T., though having an originality of their own, are part of the culture of the ancient Orient. It is not the result of direct borrowing but the outcome of a single widespread customary law[6].

The most remarkable fact is that this common tradition of law which the early Israelites and the other peoples shared has been modified at many points in the light of the Israelite understanding of the covenant relationship. Thus the characteristic mark of biblical law is its connection between legal provisions and religion; the motive for observing the *torah* is ultimately Yahweh's love for Israel. In

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2. Cf. the English translation in *Ancient Near Eastern Texts Relating to the Old Testament* (Princeton, 1956; abbr. ANET) pp. 163-80.
3. ANET, pp. 180-88
4. Cf. R S. Francis, *American Journal of Archeology* II (1948) pp. 445-50,
5. ANET, pp. 188-97
6. Cf. R. de Vaux, *Ancient Israel* (London. 1962) p. 146

short, the social concerns seen in the Pentateuchal laws are governed by Israel's covenantal relationship with Yahweh.

The Pentateuch mentions various covenants which Yahweh made. The first is with Noah and all living creatures(Gen. 9:8-17); the second with Abraham and his descendants(Gen. 15:17). It is followed by the so-called "Mosaic Covenant" narrated in Exod. 19: 3 - 24:14. Subsequently Yahweh makes a covenant with Israel again in Exod. 34:10-28, following the episode of the golden calf and Moses intercession. At the conclusion of the Pentateuch, Moses, before his death (Deut. 34), recalls this covenant moment again, and exhorts Israel to obedience. These covenants together frame the Pentateuch in its present form.

Whereas the Israelite law is fundamentally covenant law, the covenantal relationship of Israel with Yahweh itself finds its roots in the religion of the Patriarchs. Concretely it found its expression in the cult of the "god of the fathers" (Gen. 31: 52-9; Exod. 3:6; 15:2; 18:4)[7]. This god, who had revealed himself to the ancestor of the people and who remained "with him", was committed to those who were faithful to him by virtue of his promises. Thus, the theme of promise recurs frequently in the stories of Genesis[8], and in the patriarchal stories has its culmination in the covenant of Gen.15 which implicitly included the whole of Israel.

This covenantal relationship is due to the initiative of Yahweh and is the effect of a voluntary act of God, who "shows favors to whom He shows favors and grants mercy to whom He grants mercy"(Exod. 33:19), that is to say, who bestows His graces with sovereign indepen-

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7. A. Alt, Der *Gott der Vaeter. Ein Beitrag zur Urgeschichte der Israelitischen Religion*, (Stuttgart, 1966) pp. 1ff.

8. Cf. C. Westermann, "Arten der Erzaehlung in der Genesis, I, Verheissungserzaehlungen", *Forschung am Alten Testament*, (Munich. 1964) pp. 11-34

dence on whom He wishes. The covenant, therefore, is purely a gratuitous gift from the part of Yahweh, and not a consequence of the merits or of the grandeur of Israel (Deut. 7:7f,; 9:5).

It is true that the notions of election and covenant were not given formal statement by early Israel. But both were fundamental to her understanding of herself and her God from the beginning. As for election, we can find no period in Israel's history when she did not believe that she was the chosen people of Israel[9]. Though given its clearest expression and characteristic vocabulary in literature of the seventh and sixth centuries, the notion of election was dominant in Israel's faith from the beginning.

The theme of covenant too faces the same situation. Thus, it is true that the word "covenant" *(berit)* occurs rather infrequently in the Old Testament literature before the seventh century, while the theology of the covenant receives its classical expression in Deuteronomy. However, the covenant figures too prominently even in the earliest strata of the Pentateuch, and much of the Old Testament is inexplicable without it[10].

The Mosaic covenant which Yahweh made with Israel through Moses at Sinai is the culmination in which the relationship between Yahweh and Israel is formalized. As the tradition now stands, the solemn moment in which this covenant was concluded is narrated in Exod. 19:3-24:14. God declares the terms of covenant, first directly to the people (Exod. 10:1-17) and then - because they are afraid - through Moses (20:22-26: 21:1-23:19), concluding with a section which anticipates the conquest (23:20-33). The covenant is then concluded by a complex of ritual acts, including a declaration of acceptance and obedience by the people (24:1-14).

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9. H. H. Rowley, *The Biblical Doctrine of Election* (London, 1950 pp.38f.

10. W. Eichrodt, *Theology of the Old Testament* I (1961) p. 45

The Mosaic covenant form has its closest parallel in certain suzerainty treaties (i.e., treaties between the Great King and his vassals) of the Hittite Empire[11]. The fact that the covenant follows the pattern of a suzerainty treaty is of profound theological significance. Through solemn oath the Israelite tribes accepted the overlordship of the all-powerful God who had delivered them and, as his vassals, engaged to live under his rule in sacred truce with one another in obedience to his stipulations[12].

The covenant was Israel's acceptance of the overlordship of Yahweh. And it is just here that the notion of the rule of God over his people, the Kingdom of God, central to the thought of both Testaments, had its start[13].

The covenant was thus in no sense a bargain between equals, but a vassal's acceptance of the overlord's terms. It therefore laid conditions on election and injected into Israel's notion of herself as a chosen people a moral note, which she would never be allowed to forget. Covenant could be maintained only so long as the divine overlord's stipulations were met; its maintenance required obedience and continual renewal by the free moral choice of each generation.

The stipulations of the covenant were primarily that Israel accept the rule of her God-King and have no dealing with any other god-king, and that she obey his law in all dealings with other subjects of his domain. These stipulations explain the paramount importance of law in Israel at all periods of history.

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11. For a more detailed treatment of the topic cf. G. E. Mendenhall *Law and Covenant in Israel and the Near East* (The Biblical Colloquim, 1955) pp. 83f.

12. It will be noted that this form is markedly different from that of the Patriarchal covenant, however much features in the latter may have prepared the way for it. There, covenant rests on unconditional promise for the future, in which the believer was obliged only to trust. Here, on the contrary, covenant is based on gracious acts already performed, and issues in heavy obligation.

13. Cf. W. Eichrodt, *op. cit.*, Vol, I, pp. 39-41

The covenantal stipulations, though not constituting a law code, nevertheless had binding authority, for they defined the policy by which members of the community must regulate their actions both toward their God and toward one another. As attempt was made to apply them in the daily situation, a legal tradition inevitably developed. Because of this necessity, much borrowing from other legal codes took place, as is evidenced by the various similarities between the Pentateuchal laws and the other law codes of second-millennium Mesopotamia, such as the Code of Hammurabi and others[14]. However, these borrowings were not indiscriminate. Only such procedures as were compatible with the spirit of Yahwism could be used. Moreover, the whole was subsumed under the righteous will of Yahweh, who is the upholder of the law (e.g., Ex.22:22-24).

This connection between the law and religion explains certain peculiarities of Israelite legislation. Thus, because it is designed to safeguard the covenant, it enjoins severe penalties for all crimes against God, idolatry and blasphemy, and for crimes which tarnish the holiness of the chosen people, e.g., bestiality, sodomy and incest.

It is further distinguished (even from the Hittite law code which is the most lenient) by the humaneness of its sentences. Bodily mutilation is exacted only in one very special case (Deut. 25:11-12) which the Assyrian law punishes in the same way. Flogging is limited to forty strokes, 'lest the bruises be dangerous and your brother be degraded' (Deut. 25:3). Certain dispositions in the Code of the Covenant, more developed in Deuteronomy, protect the stranger, the poor, the oppressed, the widow and the orphan, even the personal enemy (Exod. 22:20-26; 23:4-9; Deut. 23:16-20). Exemptions from military service are very generous (Deut. 20:5-9). Even the law of retaliation, *lex talionis*, seems to be merely asserting the

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14. Cf. S. Greengus, "Law in the O. T.", *I. D. B.* Supplementary, Volume p. 533

principle of proportionate compensation. Only in one case is strict retaliation exacted: the guilty murderer must die and cannot buy his freedom. The rigour is justified by a religious reason: the blood which has been shed has profaned the land in which Yahweh dwells (Numb. 35:31-34)[15].

The social orientations of covenant laws themselves emerged from their divine dimensions. Thus, because the covenant was a gratuitous gift to the Israelite community, every individual Israelite had equal claims to the gifts connected with the covenant — specifically divine protection and land which stood for material security and prosperity. The same law, the commandment of love (Deut. 6:5; 7:9; 10:12; 11:1:13:22; 19:9) bound them to Yahweh and among themselves. Leviticus 25:23 presents the fundamental law concerning property: "the land is mine and you are but aliens who have become my tenants". Hence, nobody could claim absolute and permanent rights on land or property. In Jubilee year the property bought had to be returned to its original owner who had sold it because of poverty (Lev. 25:10; 13:23-38). Leviticus 19:15 and Exod. 23:6 forbid perversion of justice and practice of partiality.

The King or the ruler was merely God's designate, the anointed of Yahweh (1 Sam. 10:1), who was to serve the people as shepherd (2 Sam. 5:2). He was not to act as master, but as guide who leads the community to prosperity and peace (cf. Ps. 72).

The spirit of the covenant, which has its origin in the gratuitous love for and election of Israel is very well brought out by the endeavour of the Israelite law to inculcate mercy[16] towards the weak and the poor. In all

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15. R. de Vaux, *op. cit.*, p. 149

16. In Hebrew *hesed* "steadfast love" (which is an attribute of Yahweh), and "kindness, benevolence" which a man shows to his neighbour; the term implies solidarity, mutual availability, belonging together etc.

the legislations the chief concern was to show mercy to those of the same covenant: one should not curse a deaf man, nor put a stumbling block before the blind (Lev. 19:14). In particular, the weak people to be protected were the widow, the fatherless, the *ger*, and the client,[17] in short, those members of the community who were without a family to uphold them or who had no rights of their own.

In Deuteronomy 24:19ff, one finds the greatest concern for the poor and needy. The text deserves to be cited in full. "When you reap your harvest in your field, and have forgotten a sheaf in the field, you shall not go back to get it; it shall be for the sojourner, the fatherless, and the widow, that the Lord God may bless you in all the work of your hands. When you beat your olive trees, you shall not go over the boughs again; it shall be for the sojourner, the fatherless and the widow. When you gather the grapes of your vineyard, you shall not glean it afterwards; it shall be for the sojourner, the fatherless, and the widow. You shall remember that you were a slave in the land of Egypt: therefore I command you to do this." (cf. also Lev, 19:9f.; 23:22) The Israelites could repeat with pride these words of Deuteronomy: What great nation is there whose laws and customs are so just as all this Law?" (Deut. 4:8)[18]

The prophets exercised many functions related to the law. Chief among these was the task of directing attention, in the name of Yahweh to those breaches of the covenant stipulations which would bring Yahweh's judgment upon Israel. Only occasionally do the prophets actually refer to the law[19]. Their warnings are of un-

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17. Cf. ,J. Pederson, *Israel, Its Life and Culture I-II* (Copenhagen, 1953) p.44

18. R.de Vaux, *op. cit.*, p. 150

19. While studying the prophets in relation to the Pentateuch, there arises the problem of their chronological relationship. It is from the viewpoint of canon as it now exists, rather than by any very clear

parallelled vehemence because they see an entirely new day dawning for Israel; a new action of God approaching her, which will bring with it heavy punishments but also mysterious acts of preservation. While the prophets preached a radical understanding of the law, they spoke also of a new covenant(Jer. 31:31-34; Exod. 36:22-32; Is.54:10;55:3). The role of Israel in the new covenant is well defined: "I have formed you and appointed you to be a light to all peoples, a beacon for the nations, to open eyes that are blind, to bring captives out of prison, out of the dungeons where they lie in darkness." (Is. 42:6-7)

In the post-exilic period, the original view of law changed and the community was considered to be actually constituted by the law (Neh.8). The law came to be viewed as a set of rigid rules, instead of serving the community as an ordinance of salvation[20].

In the Judaism of the last two centuries B.C. and at the time of Jesus 'law' was used in an absolute sense: the law was an absolute in itself and was independent of the covenant. It is fulfilment of the law that determines one's membership of the people of God. Israel no longer saw her special status as due to Yahweh's living self-revelation in the course of her history, but considered this status to rest upon the obedience of those who were righteous in terms of the law. In other words, the law had assumed a dominant role as a mediator between God and men. Especially in Hellenistic Judaism, the law came to stand

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recognition of the actual course of Israel's religious development with specific chronology of the emergence of religious and ethical ideas, that we can resolve the dispute about the priority of the Law or the Prophets. Accordingly, there is a very real basis of moral and religious concern in the preaching of the prophets which overlaps with similar concerns which we find in the rulings of *toarh*.

20. Cf. von Rad, *op. cit.*, I, pp. 187ff.

alongside wisdom, which had likewise come to become separated from its original setting, namely the covenant[21].

In the new Testament the term "law", or "the law" usually means the law of God revealed in the Old Testament. The term occurs only in few instances. But the meagre incidence of the term is no indication at all about the importance of the problem of "the law" in the gospels. The problem is very real also in the other N. T. writings, especially in the letters of St. Paul[22].

The key to the New Testament understanding of law is the awareness exemplified in Acts 3:24: "And all the prophets who have spoken, from Samuel and those who came afterwards, also proclaimed these days." Accordingly, the Old Testament is a book of prophetic promise which foretold an age of salvation that was to come. For the N. T., this age had come with the events concerning Jesus of Nazareth, so that the age of the N. T. and the early Church can be regarded as one of fulfilment. Various quotations that are taken from the O. T. and cited in the N. T. show that by the first century A. D. the view was fully accepted that the prophets had referred to events that were to take place centuries after they had spoken. The same idea was prevalent, though in an analogous manner, also to the other divisions of the Old Testament. This interpretation is based on the very nature and structure of the Old Testament. According to von Rad, "Israel's history with God thrusts forward violently into the future, and in the New Testament this phenomenon of ever more powerfully concentrated expectation appears in a new light; for there, following upon the numerous earlier new saving beginnings, it reaches its last hermeneutic modification and its full and final interpretation"[23].

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21. Cf. H. H. Esser, "Law", *Dictionary of New Testament Theology* II (London, 1976) p. 442

22. Although a deeper and more methodic study of the N. T. understanding of law would be in place, availability of space restricts us merely to the study of a few aspects connected with law that are common in the N. T. books.

23. von Rad, *op, cit.*, II, p. 332

If, central to the Old Testament was the event of the covenant, the New Testament writers see a new covenant ratified in and through the person of Jesus Christ (Mt. 26:28; Mk. 14:24; Lk. 22:20; 1 Cor. 11:25). In him there took place the climax and fulfilment of the whole history of salvation that was initiated in the Old Testament. The same God being the author of the whole history of salvation, there is an essential unity between both the Testaments. At the same time as the New Testament is the fulfilment of the Old Testament, there is a radical difference between them. This aspect is seen in the very attitude of Christ towards Mosaic law. Jesus manifests a dual attitude: acceptance and criticism; faithful observance and transgression are found side by side.

This is true first of all in the case of the ritual prescriptions of the law. Thus Jesus carried out the pilgrimages to the temple on the feasts as prescribed by the law (Jn. 2:13; 5:1; 7:10). He recognised the temple as the house of prayer and protested against its desecration (Jn. 2:13-22; Mt. 21:12f). He celebrated the Passover with his disciples (Mt. 26:17-19; Lk. 22:7-15).

Even though Jesus accepted the O.T. ritual laws, he gave precedence to moral conduct rather than to the sacrificial system. Hence, according to Christ, liturgical piety must not become a substitute for moral conduct and reconciliation has precedence over sacrifice (Mt. 5:24). It can even become sinful if one should withhold from one's parents their rights and lawful sustenance on the grounds of an appeal to cult obligations (Mk. 7:9ff). Further, more important than any form of liturgical piety are the great moral commandments - justice, mercy and fidelity (Mt. 23:23f).

According to the gospels it was sabbath ordinance which provided the greatest source of conflict between Jesus and the authorities. Mt. 24:20 states, "Pray that your flight be not in the winter or on the sabbath". Here, we may reasonably suppose that in general Jesus observed the law of the sabbath observance. However, the gospel

accounts show that Jesus took up an attitude of interior freedom with regard to the sabbath law and rejected the rigoristic observance demanded by the scribes and pharisees. Thus, he not only allowed his disciples to pluck the ears of corn (Mt. 12:1-8) but he himself often healed the sick on the sabbath day (Mt. 12:9-14; Lk. 13:10-17; Jn. 5:9), thus breaking the law. He based this attitude not only on the precedence of the love of the neighbour over a cult of law but above all on the affirmation, "The Son of Man is also lord of the sabbath" (Mt. 12:8). By it he claimed the right as Messiah to determine how the sabbath law should be put into practice. It amounted to his placing himself above the sabbath law.

The attitude of Jesus regarding the laws of ritual purity was of even greater freedom. Here too he not only allowed his disciples to transgress the strict prescriptions of legal purity elaborated by the rabbis (Mk. 7:1ff), but he defended their conduct. Even more, he himself violated these laws by touching a leper (Mk. 1:41) and a dead body (Mk. 5:41; Lk. 7:14). In his discourse about the law of purity (Mk. 7:14-23) Jesus explains that the idea of levitical purity is essentially irrelevant: "There is nothing outside a man which, by going into him, can defile him; but the things which come out of man, that is, out of his heart, are what defile him." (Mk. 7:15) Jesus then substitutes it by the law of moral purity.

Jesus accepted the moral specifications of the Old Testament law. Thus he pointed out the ten commandments to the rich young man as the way to eternal life (Mk. 10:19). Yet he interiorised and radicalised them, as is seen especially in the sermon on the Mount. He affirms, "you have heard of old". But he goes beyond it, "but I say to you". This inner deepening and perfectioning of the Old Testament law is what is given expression to when Jesus proclaims: "Think not that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfil them"(Mt. 5:17).

But in what does this fulfilment consist? It consists in the fact that the same God who chose Israel and made a gratuitous gift of the covenant to the posterity of Abraham (in whom all nations were to be blessed), "so loved the world that he gave his only-begotten Son, that whoever believes in him should not perish but have eternal life" (Jn. 3:16). This God made a covenant with Israel and the covenantal formula was: "I will be your God; you will be my people". But in the person of Jesus Christ, it is not merely mutual belongingness in a treaty, but rather God becoming one with man - "Emmanuel" (Mt. 1:23). Connected to the old covenant were the stipulations to guard the covenantal rights of the parties concerned. But with the coming of the Beloved Son of God, the old covenant together with its laws are abrogated: "The law and the prophets were until John; since then the good news of the kingdom of God is preached" (Lk. 16:16). In its place is made a New Covenant, sealed by the blood of the very Son of God (Mt. 26;28).

If love was what impelled God to send His only Begotten Son into the world and make a new covenant with man, now Jesus extends the same love as a new commandment to the covenant partners: "This is my commandment - love one another" (Jn. 15:12). Just as the covenant partners of the old were distinguished by their observance of the laws, so too "by this all men will know that you are my disciples, if you have love for one another" (Jn, 13:35). Obedience to this command will make them the very friends of Christ (Jn. 15:14). They are to "love one another as I have loved you" (Jn. 15:22). And the depth of this "as I loved you" is immediately explained as, "No one can give greater love than this, that he lay down his life for his friends" (Jn. 15:13). The source and model of his love is the Father: "Just as the Father loves me, so I love you" (Jn. 15:9). It is the same love which is to be the "law" of the New Covenant.

It is not possible in this matter to make a clear distinction between the law and the person of Christ; on the

contrary, the two form together an intrinsic unity. Since the kingdom of God itself has come with Jesus, there is revealed in him the radical and absolute moral requirement of God as corresponding to this same kingdom. Hence, the law of Christ is really identical with the call to become disciples of Jesus which we constantly meet in the gospels (Mt. 8:22; 9:9; 10:38; 16:24; 19:21 etc.).

Of all the N.T. writers, Paul is the most vociferous in exposing the abrogation by Christ of the old law. The letter to the Romans as well as the one to the Galatians centre their attention to this basic issue. However, in the place of the old law, Paul posits "law of Christ". In 1 Cor. 9:21 he calls himself *ennomos Khristou*, that is, one who remains within the law of Christ, and in Gal. 6:2 he refers to the moral standard which applies to Christians as the law of Christ. As the context shows, it refers to the law of love for the neighbour. In it are included all the admonitions, commandments, and prohibitions which find expression in the numerous commands that are found in Paul's letters. The law of Christ has this essential moral content in common with the law of the Old Testament; it is the "summing up" or "fulfilment" of the mosaic law (Rom. 13:8-10). For Paul, this law of Christ is essentially bound up with the person of Christ; one grows in familiarity with this law to the extent that one grows in familiarity with Christ (Eph. 4:20). The ethical imperatives that we find in the letters of Paul are the necessary consequence of this union with Christ.

According to him the new life which is given through union with Christ is further not only the standard and the reason for moral conduct, but also supplies the necessary strength for it because it is given through the Spirit (Rom. 8:2). Hence, this law of the Spirit can bring about in us what the law of Moses was never able to accomplish, namely, the freeing from the law of sin and death.

Thus, just as Christ is the fulfilment of the Old Covenant, the new law of Christ is the fulfilment of the

old law. If basic to the old law was loving God and loving the neighbour (Deut. 6:5), the summary of the new, "fulfilled" law is to "love one another as I have loved you", to the extent of "laying down one's life for his friends" (Jn. 15:12f). There is an essential continuity to both; but a radical novelty to the new.

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Our study of the biblical concept of law is especially relevant in connection with the issuing of the new code of Canon Law. Church constitutes an important phase of the history of salvation. As such, she is united to the entire history of salvation and finds her place as continuation of the mission of Christ to the world. This history of salvation is recorded in the Bible and is normative to Church. Hence, the spirit of her legislations should be derived from the Bible. This spirit is seen to be love. It was love issuing from God that initiated and permeated the history of salvation. This love of God was "made flesh" in the person of Christ. Now, Church "the Spouse of Christ" should incarnate that very same love of Christ, and her legislations should be a witness and an expression of her "covenantal love".

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Theology of Hindu Law

Introduction

Law in the Rigvedic age marks the very dawn of law on this planet. The term law has two meanings: legal provisions and the 'social order', the latter being the more primitive usage. The inner ordering of the cosmos, including human society, is the historical starting point of law. From it springs the logically derivative form, the body of legal precepts. For the Vedic Aryans, the principle of *Rita* (order) lies behind the cosmic order. The Romans got this concept from the Greeks and they termed it *Ratum or Ratio*, and St. Augustine christened it into *Pax*, which is not peace, but what brings peace, the blissful, sacred order[1].

Order, evidently, calls for authority, and the early legal thinkers appealed to divine authority, because their main preoccupation was with stability rather than change. So the earliest form of law is a body of divinely ordained rules. In its latest form law is a body of commands of the sovereign power in a politically organised society. Both are in agreement in considering law as a manifestation of applied power. The deity comes in as an easy explanation of the unconscious and mysterious character of the ancient formation of law and social order. Thus the ancient Jews attributed the origin of their laws to Yahweh, though now it is certain that most of it can be traced to the Hittites and to Hammurabi. It is of human

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1. Radhabinod Pal, *The History of Hindu Law*, University of Calcutta, 1958, p. iv

psychology to ascribe the unconscious to supernatural sources[2]. For the Vedic *Rishis*, the source of Law is divine reason. The *Rishis* speak of *Rita* as the organising principle of the universe. Law being the product of divine nature and divine essence, it must be eternal and immutable, and excludes all idea of arbitrariness. But since human reason is a reflection of divine reason, law is not incomprehensible to man. But the Rigvedic sages would not attribute law to divine will, since it is inscrutable to man. The *Rishis* could not have thought of any ideality as the source of law, since *Rita* developed prior to the ordering of society itself: the ordering principle existed before diversity arose. Human life must harmonise with *Rita*. Law, in its earliest form, is nothing but harmony with nature, and the *Rishis* were great Nature lovers to the extent of worshipping nature. The West thought in terms of conquest of nature, which, incidentally, was also the thought of Genesis: Adam was ordered to subdue the earth. But the Greek Stoics appreciated the law of natural harmony. "Live harmoniously", said Zeno, and "Live in harmony with Nature", said his disciple Cleanthes. The Rigvedic *Rishis* did not speculate on the end or goal of law, but only on its essence. The following epoch would study the end of law. The Upanishadic sages focussed their attention on the end of law. For them, law originated after the advent of multiplicity. Their search was for unity in multiplicity, which they found in *Brahman*. During this period, *Rita* receded to the background, and the security of the whole could not be obtained by the creation of such heterogeneous principles as 'Wisdom', 'Power', 'the People', and the 'Nourisher'; at this juncture, He created the "most excellent Laws" - *tatsreyorupamatyasrijata dharma*[3]. There is nothing higher than the law. This creation of law helped to realize the end: henceforth, even a weaker man rules a stronger with the help of the law— *atho abaliyan baliansamasamsate dharmena*[4].

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2. Radhabinod Pal, *op. cit.*, p. vi
3. Radhabinod Pal, *op. cit.*, p. vii
4. Radhabinod Pal, *op. cit.*, p. vii

Some would define law as the sum of conditions of social coexistence with regard to the activity of the community and of the individual[5]. For Kelsen, law is the order of human behaviour[6]. For Ehrlich the role of social compulsion, rather than State authority is the main point of legal norm[7]. For Karl Marx, the production of commodities constitutes the economic structure of society and this is the real foundation on which rise legal and political superstructures[8].

There are three stages in the development of ancient Hindu law: the Rigvedic tribal society with its concept of *Rita*; secondly, the Brahminic period of ritualism with a hierarchically organised social structure, and thirdly the *Sutra* period which saw the systematization of Hindu law. Various causes contributed to the rise of the Brahmin to the highest position, and legislation hinged around the institution of Brahminism[9]. Whereas the *Rigveda*, the *Brahmanas*, and the *Upanishads* contain only scattered notions of a juridical nature, the *Sutra* literature has explicit treatment of Law. They have been recorded in the *Grihya Sutras*, and the *Dharma Sutras*, dating between 600 B. C. and 200 B.C.

2. Evolution of the Hindu code

Several legal schools came into existence during the *Sutra* period: those of Gautama, Vasistha, Baudhayana, Apastamba, and Manu. They were all local schools. But how could a locally authoritative text like the *Manu-Smriti* or *Manava-Dharma-Sastra* came to be universally accepted? It had practically replaced the earlier *Dharma Sutras* and the primary *Smritis*.

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5. Cf. Pulszky, *Theory of Law and Civil Society*, p. 312
6. Kelsen, *General Theory of Law and State*, p. 1
7. Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, foreword.
8. Karl Marx, *Critique of Political Economy*
9. Julius Eggeling, *Sacred Books of the East*, Vol. XII, p. 11

The factors that contributed to legal variations are social and economic facts and not necessarily political variations, since the former variations are discernible prior to the emergence of political institutions. Besides, the customary law generally continues unaltered inspite of political variations. This is especially true of the origins of the Caste system.

It seems Hindu law acquired its universalistic outlook by the establishment of Special Law Schools, independent of the Vedic *Shakas* and *Charânas*[10]. Why Manu and no other lawgiver was chosen as the basis of the universal Hindu Code, is the fact that his name is surrounded in sacred myths, which gave him a unique authority[11]. The Grammarian Patanjali says that in his time sacred law was not confined to the Vedic schools; it was taught also in special law schools. He also refers to the science of sacred law called *Dharma-vidya*[12]. From the end of the Rigvedic period, the Aryans seem to have been characterised by religious particularism. Hence we see the dismemberment of the law since law and religion were inter-mingled, and inter-dependent. Yet, in one sense, Hindu law is racial law, with local variations. The idea of territorial law was also known to the ancient Aryan jurists. Thus Vasistha says that the legal system prevailing south of the Himalayas, and north of the Vindhyas must be obeyed by every one[13]. Distinct provinces had distinct legal systems. Local law also existed in the same province, especially as the simple rural economy saw the emergence of trade and industry like mines, dykes etc.[14]. Manu has declared that the peculiar laws of countries, castes and families may be followed in the absence of rules of *Sruti*[15].

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10. Buhler, *Sacred Books of the East*, Vol. XXV, p. xlvii
11. Buhler, *Sacred Books of the East*, Vol. XXV. pp. lvii-lxiii
12. Patanjali, *Mahabhashya*
13. Vasistha, I, 8-9
14. Buhler; *Sacred Book of the East*, II, p. 237
15. Vasistha, I

3. The Primordial Covenant

Covenant myths are common to many ancient peoples, like the Jews, Hindus etc. Thus, we read about *Devas* making a covenant among themselves against the growing power of the Asuras and conferring all their power on Varuna and making him their king[16]. This covenant was irrevocable. The *Satapatha Brahmana* says: "The *Asura Rakshasas* have come in between us; we shall fall a prey to our enemies. Let us come to an agreement and yield to the excellence of one of us"[17]. But on earth, kingship began in a different way. Men in their discord prayed to the gods who gave them the institution of kingship. According to the Veda, "Brahman created still further the most excellent kingship. There is nothing greater than kingship"[18]. After the gods had emerged out of the state of warfare, after they had united themselves in one person, by the covenant of every one with every one, they contrived to render this concord of theirs ever imperishable[19]. Says the *Rishi*: "He should be scattered to the winds whosoever would transgress this covenant, whosoever would disobey the central power, the sovereign"[20].

4. Rigvedic Philosophy of Law

According to Dr. Berolzheimer, closely connected to the philosophy and religion of the Aryans are certain fundamental concepts of the philosophy of law which were later to influence Graeco-Roman legal thought[21]. Rishi Aghamarshan says:

> "From Fervour kindled to its highest, Eternal
> Law and Truth were born:

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16. *Aitareya Brahmana*, IV. 6, 7
17. *Cf. Sacred Books of the East*. Vol. XXVII, p. 93
18. *Brihadaranyaka Upanishad*, I. 4. 2
19. Buhler, *Sacred Books of the East*, Vol.XIV, p. lii
20. Radhabinod Pal, *op. cit.*, p. 44
21. Berolzheimer, *The World's Legal Philosophies*

Thence was the Night produced, and thence
The hollowy flood of sea arose."[22]

Here, the philosopher-poet gives in a nutshell his philosophy of creation in which he shows the genesis of Eternal Law and its relation to the rest of the created things. He contemplates a transcendental and objective law. Everything else is a transient mode or form of this Law. Fervour or Fire is the first creative principle from which eternal Order (Law), harmony and truth were born. Aghamarsana's is a naturalistic conception of the universe and for him *Rita*, or eternal harmony is beyond time and change. Another Rigvedic hymn speaks of law as more powerful than the gods Mitra and Varuna, and it is prior to them. Rita, as the ordering principle of universal life, is imbued with human purpose[23]. Zeus, the supreme god of Homer is whimsical; Yahweh, the Hebrew God, frequently changed His mind. But *Rita*, is systematic in its operation. Even the gods are subject to *Rita*.

The Rishi Madhuchhanda speaks of *Svadha*, a term allied to *Rita*, meaning Nature or conformity to Nature. This term has an important bearing on the theology of law. *Svadha* is the constitution of nature, developing spontaneously from the energy inherent in material objects without the intervention of outside agencies. Here one may seek the germ of the later legal and moral doctrine that enjoins on all to stick to the duty assigned to them by law. Law is most inviolable. One *Rishi* Says: "Not men of magic skill, not men of wisdom impair the god's first steadfast ordinance"[24]. The *Rigveda* says:

"Firm-seated are Eternal law's foundations:
In its fair form are many splendid beauties,
By holy Law, long lasting food they bring us:
By holy Law have cows come to our worship"[25].

22. *Rigveda, Mandala* X, 190. 1
23. *Rigveda, Mandala* I
24. *Rigveda, Mandala* III, 56,1
25. *Rigveda, Mandala* V, 62, 1

According to the *Rishis*, the gods had only a purposive existence; they existed for the purpose of human benefit. These gods had the duty of maintaining the Law and perhaps also of creating laws. *Vrata:* It was a special aspect of *Rita*. We get this concept from the Rishi Vaiyasva. This only shows that the Vedic jurists were alive to the variations of law. From the lawgiver Vasistha we get the concept of *Nirriti*, which is the opposite of *Rita*, and which was conceived to be the source of all evil. It might have been the revolt of men against the gods, the *hybris* of Homer: the presumption or the over-stepping of limits set to human conduct and from which arises the rebellious spirit. This *Nirriti* was considered to be a cosmic evil, like Original Sin in Christianity. Thus we read in the *Rigveda:*

> "Those who destroy, as is their wont, the
> Simple, and with their evil natures
> Harm the righteous,
> May Soma give them over to the Serpent, or
> To the laps of *Nirriti* consign them."[26]

For the sage Vasistha, the concept of falsehood *(anrutam)* and untruth (*asatyam*) are as real as the positive ones. In his ethical speculation Vasistha identified virtue with knowledge. This was also the case with Socrates.

Vedic Law (Rita) was not only transcendental, but also immanent. It was anthropological and utilitarian. It was meant for every stage in a man's life. It was humanistic and down to the earth. The *Rishis* were not ascetics: they did not look for felicity in a next world.

It was not a world-negating spirituality, but world-affirming. Also, it was not eschatological in its orientation. Thus one *Rishi* sets forth his conviction most emphatically: "Once, only once, the heaven was made, only once the earth was formed. Once only Prisni's milk was shed: no second after this, is born"[27].

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26. *Rigveda. Mandala* VII, 104, 9
27. *Rigveda, Mandala*, Vi, 48, 22

5. Law and Nature

Stoic law is very intimately related to Nature. So too, the Medieval Christian concept of Law. The Vedic *Rishis* were also aware of the place of Nature in Law. They called it by the term, *Svadha*. It refers to whatever is sanctioned by law as custom or practice. It is thought of as a quality of nature, the essence of a person, or thing as derived from its genesis. It is thought of as a creative force, developing from the spontaneous energy inherent in things, without the aid of any external agency. From this springs the authority of custom or usage in jurisprudence. Whatever is ancient or handed down by the ancients commands respect probably because it is consistent with nature. What is contrary to *Svadha* or nature, could not have been respected so often. Besides, the fact that actions done according to customary law have not been punished by gods proves the fact that they are normative and a safe code of conduct. When we hear *Rishis* say "this is so, because it is its nature" *(Svadha)*, we are forced to think that the interpretation of nature demands experience. The primitive man's attitude to the ethical and just was controlled by feeling, rather than by thought. He would go by the socially and traditionally acceptable, rather than by the rational, while culturally advanced people would judge the ethical by the use of reason. But some Vedic jurists were aware that legal knowledge was not obtained by sense experience and feeling. They rose to the realm of conceptual thought process. Thus the sage Dirghatamas declares: "What thing I really am, I know not clearly; mysterious, fettered in my mind, I wander. When the First-born of Holy Law approached me, then, of this speech I first obtain a portion"[28].

6. Divine reason versus divine will

While Christian theology gives great prominence to God's will, the early Aryan jurists and moralists did not

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28. *Rigveda, Mandala* L, 164, 37

admit of divine will as the source of Law. The *Rishis* considered the divine will as inscrutable and arbitrary. Consequently, it could not be the ultimate source of law, since what is arbitrary is opposed to order (*Rita*). What is orderly cannot be explained by the arbitrary. Since man's reason is a reflection of divine reason, he is able to understand the cosmic order with the aid of his reason. And divine reason is not beyond human comprehension. But this difficulty vanishes when justice is made identical with divine reason.

7. Law in the Sama Veda and Atharva Veda

The *Sama Veda* considers law as a body of declarations of an eternal and immutable code. It means that custom has only a declaratory nature, not constitutive. Law is not 'made', but it 'exists'. It exists within the people and it is born with them. Later on, this view would be explicitly stated by Manu, who says that he did not make the code, but only declared it, the knowledge of which may only be obtained through divine revelation.

It is probably in the *Atharva Veda* that we meet for the first time the idea of the end or purpose of law. One text says: " Truth and potent Law, the consecrating rite, *Brahma*, and sacrifice, uphold the earth". Again, "by law the *Adityas* stand secure, and *Soma* holds his place in Heaven"[29]. According to the philosophers of this period, law was thought of as an instrument of general security, to maintain the existing positions. By this time, the caste system had taken deep roots. The four earthly castes were modelled on the four Heavenly castes[30].

8. Legal thought of the Upanishadic period

According to the *Brihadaranyaka Upanishad*, the aim of law was to hold together the multiplicities of creation. Says the sage: "Law is the *Kshatra* of the *Kshatra*.

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29. *Atharva Veda*, XII, 1, 1
30. Cf. N. K. Dutt, *Origin and Growth of Caste in India*

Therefore, there is nothing higher than Law"[31]. Here *Kshatra* means power or might. The creation of law enabled even a weak man to rule over the strong as with the help of a king[32]. Therefore, the end of law is to ensure order in society. According to the author of this Upanishad, law exists independently of the sovereign and it is above him. Hence this philosopher, is opposed to the absolutist doctrine of the unlimited power of the State. That is, there is a rule of law above that of the individual and of the State. According to the same Upanishad, Brahman is equated with Law. Says the author: "He, from whom the sun rises and into whom it sets, him the *Devas* made the Law"[33]. Commenting on this text, Sankara elucidates the immutability of law by saying that whatever was determined then, is also the law for the future.

Various Upanishadic sages have speculated on the nature of law. The sage Varuna traces the root of law to desire. But he assigns a superior bliss to the one who is without this desire or *kama*. According to the sage Sandilya, a man is the creation of his own will. His destiny is determined by what he wills here. Yajnavalkya, the great interlocutor of the *Brihadaranyaka Upanishad,* has a peculiar philosophy of self-love (*atma-kama*): We love everything else for the sake of the Self. It is not selfishness or egoism, but the highest and purest love of the Supreme Self immanent in man. It is like the Gospel doctrine of loving God above everything else. Addressing his wife Maitreyi, Yajnavalkya says: "Verily, a husband is not dear, that you may love the husband, but that you may love the self, therefore, a husband is dear. Verily, a wife is not dear, that you may love the wife, but that you may love the self, therefore, a wife is dear. Verily, everything is not dear that you may love everything, but that you may

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31. *Brihadaranyaka Upanishad*, I, 4, 14
32. *Brihadaranyaka Upanishrd*, I, 4, 14
33. *Erihadaranyaka Upanishad*, I, 5, 23

love the self, therefore, everything is dear. Verily, the self is to be realised, to be heard, to be perceived, to be marked, O Maitreyi, when we realise, hear, perceive, and know the self, then, all is known"[34]. From this ethical doctrine flows Yajnavalkya's philosophy of law. It is the duty of man to perfect himself and his conditions and to avoid whatever is a hindrance to the perfection of the self. According to the *Yajnavalkya Samhita,* the greatest law is to think of God, stationed like a lamp, in the heart of man.

Regarding the basic principle of justice, the *Yajnavalkya Samhita* lays down the same norm that we find in Thomasius and Immanuel Kant. Thomasius Says: "Do not do to another what you would not love another to do to you". And Kant adds: "Act only according to such maxims as would enable you to will that they may become universal laws".

According to Yajnavalkya, the state arises out of a contract according to which it is bound to care for the security and need of the people.

Yajnavalkya's theory of punishment (*Dandaniti*) was also based on the concept of harmony. Disharmony arises when a person deviates from the place assigned to him by law. He must be punished and the order restored. Says the sage: "Having duly punished (men of his own) family, caste, division and class and the subjects, the king should place them in the right place"[35]. Yajnavalkya's theory of good and evil is based on his general ethical theory, according to which ignorance is the source of all evil, and knowledge the source of good. It is clearly Gnostic in its approach.

9. Legal thought of Mahidasa

Mahidasa Aitareya, the author of the *Aitareya Brahmana* and the *Aitareya Aranyaka,* has some lofty concepts on the subject of law. Like General Smuts, he too

34. *Baihadaranyaka Upanishad*, II, 4, 5
35. *Yajnavalkya Samhita*, I, 361

has a holistic view of Reality, which unfolds itself by gradual evolution. And his theory of evolution resembles very much that of Whitehead. His legal theory flows from his metaphysics and ethics. According to Mahidasa, law should lead man to greater and greater integration. In his legal system, he does not rule out man's physical and emotional needs. Pleasure, however, must be legitimate and it must be in harmony with nature. For the sake of integration, sense gratification is not only legitimate, but even obligatory. Thus for him, begetting a son is greater than asceticism. In his political philosophy, Mahidasa said that the state was necessary for securing social and political harmony. The state is possible only on the assumption of the delimitation of individual interests. Regarding inviolability of custom, Mahidasa has this observation: "Let no man swerve from it. Let no man transgress it. For the old did not transgress it and those who transgressed it became lost"[36].

In conclusion, it may be pointed out that during the Brahmana and the Upanishadic period, law was likened to a wheel whose nave is Brahman, standing for the sub stance of Law, and for immutability. The spokes constituted the mutable elements of law. These mutable elements were determined by the quality of goodness, that can be known by reason.

10. Law of the Sutras

During the Vedic period the hub of Hindu legal thought was *Rita;* during the Brahminic and the Upanishadic period it was *Brahman;* during the period of the Sutra literature it was *Dharma*. It is impossible to give an exact English rendering for the term '*Dharma*'. Apte's Sanskrit dictionary gives seventeen meanings for this word, such as, 'Religion', 'Law', 'Righteousness', 'Duty' etc. The oldest Vedic meaning of this term is uncertain. It comes from the root, *dhru*, meaning to uphold, suport, nourish,

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36, *Aitareya Brahmana*

etc. In most Rigvedic instances it means rites or religious ordinances. The *Brihadaranyaka Upanishad* treats *Dharma* and *Satya* as equivalents. In a passage of the *Chhandogya Upanishad* Dharma stands for the duties of the *Asramas* or the stages of life. The term had passed several stages of meaning before it came to the most significant sense of the duties of a man according to his caste and stage of life[37]. It is in this sense that the word is used in the *Taittiriya Upanishad*, I. 11: "Speak the truth, practise your *Dharma*". The *Gita* and the *Dharma Sastras* also use the term in this sense. The *Manu smriti* speaks of some sages asking Manu to impart instruction in the *dharmas* of all the *varnas* or castes. Medhatithi, commenting on Manu says that the expounders of the *Smritis* discuss dharma in its five-fold aspect: *Varna dharma, Asrama dharma, Varnasrama dharma, naimittika dharma* (like *prayascitta*) and *guna dharma* (like the king's duty to protect). But the *Mitakshara* on the *Yajnavalkya Smriti* adds a sixth one: *Sadharana dharma* or duties common to all men, including even the untouchables or *Chandalas*, like *Ahimsa* and this text quotes a Vedic verse, *na himsyat sarva bhutani*. The *Arthasastra* of Kautilya also prescribes virtues like *ahimsa*, *satya*, *sauca* (purity), *kshama* (patience), etc., on all men.

For Jaimini, the Mimamsa philosopher, Dharma, means, "a desirable goal indicated by Vedic injunction". The *Vaiseshika Sutra* defines dharma as "that from which happiness and final beatitude follow". For Manu, *dharma* is what is practised by the learned that live a moral life, that are free from hatred, and partiality and that is accepted by their hearts (conscience)[38]. The *Nitisara* of Kamandaka has a very pragmatic definition of dharma: "that which is praised by the *aryas* or respectable people, when done, and *adharma*, that which is censured by them". There are one-sided definitions of dharma to be

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37. Kane, *History of Dharma Sastra*, Vol. I, p. 3
38. *Manu Smriti*, II, I,

met with in Sanskrit literature, like: *Ahimsa paramo dharma*[39], *Acarah paramo dharma*[40], *Sruti pramanako dharma*[41], meaning, what is based on revelation is dharma. For the Buddhists, *dharma* often means the whole teachings of the Buddha.

Prof. Kane places the legal *Sutrakaras* between 600 B. C. and 300 B. C., and all of them are prior to Manu, the earliest, by consent, among them being Gautama.

Gautama rejects the doctrine of eternal damnation for the violation of Dharma or moral law. He believes that all sins are capable of being expiated by penance or *prayascitta*. For this belief, he quotes Vedic passages where instances of people attaining salvation by penances are to be found. For Gautama, the Vedas were the final source of law, but he did not rule out the role of reason in finding out law — *tarkobhypayah*[42]. So Gautama advises that a king should come to a proper decision in any litigation only through reasoning.

Gautama gives the following method of discovering law when no rule had been prescribed: call a *Parishad* (council) of at least ten men who are masters in dialectics and who are free from greed. Of these, four must be vedic pandits, three jurists, one *brahmacari*, one householder, and one *Bhikshu*.

Baudhayana, another great lawgiver, gives the following rule regarding the source of law: it is taught in each of the Vedas. In the second place, it is to be found in Tradition *(Smriti)* and thirdly, law comes from the practice of the *Sisthas*, namely, men who are free from greed, envy, pride, hypocrisy, arrogance and anger[43]. The following statement proves that Baudhayana was an excellent

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39. *Mahabharata, Anusasanaparva*, 115, 1
40. *Manu Smriti*, I, 108
41. *Harita Dharma Sutra*
42. *Gautama Dharma Sutra*, XI, 23
43. *Baudhayana Dharma Sutra*, 1, 1; I, 1, 5; I' 1, 6

jurist with a very practical turn of mind. "There may be five, or there may be three, or there may be one blameless man who decides questions regarding the sacred law. But a thousand fools cannot do it."[44] In the following *sutra* Baudhayana lays down a very prudent dictum: "Narrow and difficult to find is the path of the sacred law, towards which many gates lead. Hence, if there is a doubt, it must not be propounded by one man only, however learned he may be"[45]. Dealing with the topic of custom, the *Sutrakara* says that custom implies conviction and a constant and approved use. Its legality is to be found in its need and in the absence of bad results and censure. The demand for a custom shows that it is not inconsistent with nature and repetition with impunity ensures its consistency with law. Custom, says, Baudhayana, has validity only in a particular locality. It must not be universalised. But customs cannot prevail when they are in conflict with any of the three sources of law: Revelation (Veda), Tradition (Smriti) and *Sisthas*.

11. Manu and Law

Independent India witnessed the burning of the Law Book of Manu (*Manu Smriti*) by the followers of Ambedkar and Periyar, the leader of the Dravidian Movement. The reason was its injustice to the Untouchables, and the Dravidians. The *Manu Smriti* is noted for its universality of application. Unlike the Vedic schools of law and the territorial schools, Manu's code was accepted everywhere. Manu may be classed as a sociological jurist. He is not so much concerned with the validity of laws as with the human behaviour. Manu himself lays down five sources of *Dharma*: the Vedas, tradition, practice of those who know the Vedas, usages of virtuous men, and selfsatisfaction.

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44. *Baudhayana Dharma Sutra*, I, 1, 9

45. *Baudhayana Dharma Sutra*, I, 1, 13

Manu's theology of law proceeds from his cosmological views. In the very process of creation, God assigned to creatures their distinctive roles, functions and occupations, in accordance with their temperaments, abilities and aptitudes, in accordance with the Vedic revelation. Manu attributes the distinction between right and wrong to divine ordinance right at the time of creation[46]. Manu is dogmatic when he asserts that man cannot change the God-given occupations. And he strikes at the very root of human liberty when he asserts that, at birth God endows man with "whatever quality, noxious or innocent, harsh or mild, unjust or just, false or true"[47]. For Manu, Law is an order of human behaviour. The norms that he has laid down proceed from the very nature of things, though ultimately they are to be traced to the divine will, the source of law. Their validity is also guaranteed by the fact that they had been successfully put into practice in human life for ages with success and without blame. So, for Manu, law is not something imposed from outside; it is innate in man. It must not be forgotten that Manu's code is not the result of any legislation. He had no social or political clout. The law being traditional, was preserved in the memory of pandits. Kings and jurists had no power to legislate. And Medhatithi says that nothing can be added to Manu because he has laid down all that has been said in the sacred Vedas. Manu traces his authority to sacred revelation and not to any earthly ruler. Says he: "To those who seek the knowledge of the sacred law, the supreme authority is revelation"[48]. Manu has laid down certain qualifications to those who expound the law: they must not be men given to acquisition of wealth and gratification of desires. Manu was certainly an aristocrat and he ignored the needs of the lower classes, and being of patriarchal mentality, he was extremely harsh towards women. He grants no legal rights to Sudras, to

46. *Manu Smriti*, I, 26
47. *Manu Smriti* I, 29
48. *Manu Smriti*, II, 19

[illegible]

[illegible]

[illegible]

them. For Manu, *danda* was the essential characteristic of law. He even identified law and punishment. But the *Sutrakaras* were in agreement that force was necessary to guarantee justice. But here, the *Sutrakaras* are in a predicament: for the Vedic Rishis, human nature was essentially good. How, then, to account for the use of force? The answer is that, in view of eternal happiness as man's goal, the Lawgivers elevated punishment to the level of a great purifier. Punishment was not for the mere avenging animal instinct, but it was remedial and medicinal. It was something good in consideration of man's whole existence. There is no tragedy in Indian drama of the ancient classical period. The destruction of the wicked is for their final emancipation. There is no eternal damnation in Hindu theology.

According to the *Mahabharata*, "punishment rules all creatures, punishment again preserves them all; when all others sleep, punishment keeps awake: the learned know punishment as *Dharma*"[50]. According to Arjuna, punishment maintains law and order, because for him, human nature is essentially wicked, a view totally different from that of the Vedic *Rishis*. The reason is simple: Arjuna had seen a lot of wickedness during the terrible *Mahabharata* war. It is because of the fear of punishment, says Arjuna, that men do not devour one another. Some sinners refrain from sin for fear of the king's punishment, others for fear of Yama's punishment, as also for fear of the after-world. Other sinners refrain from sin for fear of each other. And thus, throughout the world, all rest on punishment[51].

Conclusion

From an analytical study of the huge corpus of Hindu law it is evident that the so-called immutability of Hindu law is a legal and theological fiction. We notice a sea of change from the Vedic law to that of the *Sutrakaras*,

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50. *Mahabharata, Santiparva*, XV, 2
51. *Mahabharata, Santiparva*, XV, 5, 6

and Medhatithi cannot be taken serious when he says that nothing can be added to the Code of Manu. The customary laws had brought out far-reaching changes in the Hindu legal system, which had undergone a gradual but steady change. Only during the Islamic conquests it became rigid and petrified. But the British rulers again made it flexible, and independent India's New Code is a far cry from *Manu Smriti*. It has been thoroughly humanised and modernised, without doing any violence to the sacred texts. It has been achieved by a hermeneutical coup: the texts have been given a modern interpretation, without violently tearing of the sacred framework. This is in keeping with a sound sociological principle laid down by Cantwell Smith, viz. Indian society must modernise itself by a process of traditionalization.

In 1955, the personal law of the Hindus were radically changed by the New Code. It was not only tolerated, but welcomed. Prof. Venkataraman says: "The Hindu code proved to be a living and growing system, showing an amazing adaptability to modern conditions. This was mainly due to the impact of English Law on the Hindu Law"[52]. As a result, the *Sastra*, as an academic discipline, retained some moral, but little legal authority.

Reporting about the New Code to the Fifth International Congress of Comparative Law, Mr. M. Anantanarayanan, Director of Legal Studies, Madras Law College, and later Chief Justice of Madras, says: "The irrational elements of religion, social ethics derived from religion, and commandments born of faith in unseen powers, have been completely eliminated from the corpus of Hindu Law"[53].

The new Hindu Code could be a good paradigm for the Church in India to evolve a Canon Law for India, taking from the Latin Church Canon whatever elements

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52. *Cf. Rev. del Inst. de Der. Comp.*, Barcelona 1957, pp. 8-9

53. *Cf.* Duncan Derrett, *Religion, Law and State in India*, London 1968, Faber and Faber, p. 324

it contains that are derived from Christian revelation, and rejecting whatever is of European origin, which is suited to the Western culture but are alien to the Indian culture. It would involve a process of de-Romanisation and Indianisation. For this, all the genuine elements of the huge corpus of Hindu law could be sifted, weighed, rejected and selected. The new Canon Law contains a lot of elements that are yet to be secularised and decentralised. As a code follows a particular culture, there cannot be a Catholic or universal Canon Law. The principle of pluralism demands the emergence of several Canon Laws. It must be remembered that Gratian, the founder of Canon Law, laid the foundation of his Code quoting 324 passages from the Popes of the first four centuries, of which, "313 are demonstrably forged", says Hans Kung[54].

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54. Hans Kung, *Infallible? An Inquiry*, London: Collins, 1971, p. 59

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The Ecclesiology of the New Code*

with a reference to the church in India

What is the ecclesiology of the new Code? There may be several answers to this question. I have opted to base mine on a quotation from Pope John Paul II, taken from his Apostolic Constitution promulgating the new Code:

> "The fundamental basis of the 'newness'...found in the Second Vatican Council and specially in its ecclesiological teaching, generates also the mark of 'newness' in the new Code.
>
> Foremost among the elements which express the true and authentic image of the Church are the teaching whereby the Church is presented as the People of God (cf. Const. L. G., n.2) and its hierarchical authority as service (Ibid. n.3); the further teaching which portrays the Church as a communion and then spells out the mutual relationships which must intervene between the particular and the universal Church and between collegiality and primacy; likewise the teaching by which all the members of the People of God share each in their own measure in the threefold priestly, prophetic and kingly office of Christ, with which teaching is associated also that which looks to the duties and rights of Christ's faithful and specifically the laity; and lastly the assiduity which the Church must devote to ecumenism."[1]

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* See the note by the general editor at the end of the article

1. *The Code of Canon Law in English Translation*, Collins/TPI edition, Bangalore, 1983, p. xiv. All references to the new Code will be to this edition,

Four main points are brought out here by the Pope to describe the Ecclesiology of Vatican II & of the new Code, namely, 1) The Church as the People of God, their triple Function, the Role of the Laity;
2) Hierarchic Authority as Service;
3) The Church as a Communion and the place of the Local Church;
4) The Church and Ecumenism.

We will study these four points as representing the ecclesiology of Vatican II and the new Code[2]. We shall add a fifth point of our own, as a sort of conclusion of the whole article, namely, Church is a mystery and not merely an institution.

I. Church as the People of God

a) Basic equality of all Christ's Faithful

The first basic idea singled out by the Pope as ushering in the ecclesiology of the new Code is the doctrine of Vatican II about the People of God. The difference between the old and the new Code is striking in this matter. The old Code had a book devoted to Persons in the Church, but it began with the clergy and spoke mainly in the order of the Pope, the Bishops, the Priests, the Religious and the Laity about whom there were only two canons, and those too about their rights and duties, though there were fortytwo more about their associations.

The whole thing has taken a different turn in the new Code. To begin with, Book II in the new Code (corresponding to the book on Persons in the Old) is entitled: On the People of God. The very title speaks

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2. Pope John Paul II sees in the Code an instrument that is fully in accord with the nature of the Church particularly as presented in the authentic teaching of the Second Vatican Council and especially in its ecclesiological doctrine.

of the basic equality of all Christians in the Church. Pope or bishop, priest or lay person, religious or a married individual, everyone first and foremost has one name, belongs to one group called the People of God. Canons 204 to 223 give the basic duties and rights of the People of God, rights which the laity share as much as the hierarchy and religious. Further there are a set of canons about the laity alone and only after this come canons on the hierarchy and the religious.

This revolution has come to us from Vatican II. It is definitely a new view of the Church with the stress on the basic equality of all the Faithful. It means that there are no more privileged people in the Church, no castes, no classes, no first and second class christians. No one in the Church is noble just for a particular appointment, and no one is to be honoured just because he is given a peculiar ministry. Canon 208 puts it in plain language: "there is a genuine equality of dignity and action among all of Christ's faithful". And this equality is not a privilege given to them by any person on earth, but something that flows "from their rebirth in Christ" (*ibid*). Because of this "they participate in their own way in the priestly, prophetic and kingly office of Christ. They are called, each according to his or her particular condition, to exercise the mission which God entrusted to the Church to fulfil in the world" (c. 204+1).

If the enunciation of this doctrine is revolutionary, its applications are still more so. The priestly function which a layman has, the prophetic function a laywoman enjoys, the kingly function even a poor and illiterate Christian possesses is his or her birthright. No human person has given it to them and no human person can take it away from them. Because it is their birthright, it follows that they can exercise this mission without any kind of further mandate, faculty or permission, each one, of course, according to their condition in the Church (c. 204+1) and the charism imparted to them by the Spirit.

The full implication of this ecclesiology can bring a great change in the entire Church, when, for instance, a lay person feels where there are no more privileged classes in the Church, when we allow and encourage the laity to take their rightful place in liturgical action, theological studies, Church government etc., and when we see our women realize their equal role in the Church and contribute their share in pastoral action, theological thought and spiritual renewal.

b) Universal Call to Holiness

Connected with this doctrine of equality of all Christians is the doctrine that we are all equally called to perfection. Vatican II named one of its chapters as the "Call of the whole Church to Holiness" (L.G., ch. 5). This doctrine of the Vatican Council has influenced the ecclesiology of the new Code too. This is positively seen when it puts as one of the first duty of all the People of God to lead a holy life and to promote the growth of continual sanctification in the Church (c.210). Negatively it is seen in the revision of canons on religious, where the phrase, "states of perfection" which was commonly applied to religious is totally dropped out. In fact, when the question came of finding a new title to replace the old title of "Religious", to take in also the Secular Institutes and Societies of Apostolic Life, the first suggestion was to name all of them as "States of Perfection". But this suggestion was thrown out very soon, as it was felt that the time had come to declare that no state as such had any exclusive claim to sanctity or perfection in the Church and that all, including the laity, were called to the highest practice of perfection in it.

The implications of this change are vast for our country. How we wish that the entire body of the faithful made its first concern the pursuit of genuine spirituality in the full sense of the term. When so many people from the west are coming here to seek for methods of meditation and paths to peace, what have the majority of our

Faithful to offer to them? And, of course, this concern for others is one accidental consequence of our spiritual search as primarily we try to be perfect because our Heavenly Father is perfect, in imitation of Christ, the Holy One of God. But its repercussions on our own life, on the entire Church and our non-Christian and de-Christianized brethren could be immense. This would be doubly so, in addition to building up our interior on the teachings of the Gospel & on Sacramental life, all the faithful, or some of them (including the laity) learn the various schools of spirituality and make themselves familiar with Indian ways of prayer, meditation, detachment etc., and are able to communicate the same to others too. And if only the laity could realize that the married state too is a holy one, and the fulfilment of their obligations (cc. 224-231) can lead them to heroic perfection because of the covenantal love that permeates their entire life (c. 1055) and because of their special vocation to permeate and perfect the temporal order with the spirit of the Gospel (c.225+2), then truly, they will find it easier to hear and respond to the holiness to which the whole Church is called[3].

c) Sharing in the one mission with subsidiarity and coresponsibility.

Canon 204 speaks of the one mission in which every one of Christ's faithful shares. We shall study in this section how the Code has given concrete suggestions to carry this principle into effect and thus put into practice the principle of subsidiarity, one of the basic ideas of the new ecclesiology. In other words we shall see how the code has tried to have every member of the People of God participate according to his or her own condition in the life and governance of the Church.

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3. On the Laity in the new Code cf. the article of G. Lobo in *Vidyajyoti* June-July 1984, p. 283, as also the one of Leslie J. Ratus in *The Examiner*, August 18, 1984.

Take the highest level of government in the Church and see how the Pope himself has adapted his pattern of government keeping in line with the present day ecclesiology. He has done this specially by the practice of the doctrine of collegiality. The canons concerning the College of Bishops and the Synod of Bishops in the Code explicitate this collegiality (cc. 336-348) and have brought in the practice of subsidiarity and co-responsibility at the papal level itself. It is true that the treatment of collegiality and its relationship with primacy in the new code has not satisfied everybody[4]. Collegiality is practised not only during ecumenical councils and synods of bishops, but also in the consultation the pope has with the bishops dispersed throughout the world or when a united action of the bishops is proclaimed or accepted by the pope as a collegial act (c. 337÷2). The principle of subsidiarity and co-responsibility is also seen in the decentralization of the work of the Roman Curia[5]. It is also seen in the meetings and resolutions of Episcopal Conferences or Federation of Bishops[6]. Of great importance in this line is the diminishing need to ask for dispensations and faculties from the Holy See and the drastic cut in the reservations made to the Holy See[7].

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4. Cf. for instance, G. Lobo, *Vidyajyoti*, 1983, pp. 176-177. In fact, the formulation of the canons in this matter was much better in the *Lex Ecclesiae Fundamentalis* which was planned as a prefix to the Code. In the *Textus Emendatus* of 1971, Collegiality got mention even before the papacy (canon 32) and eight canons beautifully summarized the meaning and work of the College of Bishops (canons 39-46) while on the Pope himself there were only three canons (canons 34-36). It is a pity that this whole introduction was dropped at the last moment and very little of it was integrated into the new Code.

5. The old Code has 23 canons on the Roman Curia, whereas the new one has just two (cc. 360-361)!

6. Cf. Meetings & resolutions of Federation of Asian Bishops (FABC) as far as we are concerned.

7. A striking example of this is the cut in the number of reservation of penalties. In the old code *latae sententiae* excommunications alone, reserved to the Holy See numbered thirty three. In the new Code the *latae sententiae* excommunications reserved to the Holy See are just four!

Subsidiarity on the level of the Local Church is the sharing of the bishop's power and work with the priests, religious and the laity. As regards the priests we find this in the new structure of the senate of priests as also the college of consulters (cc. 495-502). This is an obligatory council for every diocese. The experience forming this senate or council of priests and running the same has been varied in different dioceses. Some find in it the best solution for shared responsibility as well as an efficient forum for planning, dialogue and evaluation, while others may find in it more a cause of confrontation and consequent waste of time. It is not the place to examine the arguments of one or the other group here, but only to plead that a well run senate could be one of the best instruments for us to put into practice the principles of solidarity and shared responsibility on the diocesan level. What is said about the senate applies equally well to the diocesan pastoral council (cc. 511-514), another very broad structure including not only priests but also the religious and laity in the diocese, who come together in it to study and weigh the pastoral concerns in their Local Church and propose practical suggestions on these matters.

The Code has given quite a number of hints to say that much depends on the local bishop to put subsidiarity into practice in his diocese. As his primary task is to teach, preach (c. 386) and promote the holiness of Christ's faithful entrusted to his care (c. 387), he will realize that he will have to share much of his administrative work with others, specially his vicar general and episcopal vicars (cc. 475-481). Even as regards the curia which assists him in the administration, he is recommended to appoint a moderator to co-ordinate activities concerning administrative matters (c. 473+2). The vicar forane himself becomes a co-ordinator of pastoral action in the vicariate (c. 555,+1). If all these structures are well utilized together with other structures such as the senate and the pastoral council, subsidiarity and co-responsibility will surely flourish in every diocese.

On the parish level, subsidiarity begins by the sharing of responsibility and work by the parish priest with his assistants. Sometimes we hear complaints that the assistants are treated as grown up altar boys, meaning to say that not much responsibility is entrusted to them. The new Code makes it clear that the assistant is a co-operator with the parish priest, a sharer in his concern, working under the authority of the parish priest but with common counsel and effort in the execution of pastoral ministry (c. 545). He may be entrusted with a particular group of the faithful within the parish or given a specific ministry in a number of parishes at the same time (c. 545+2). When a parish is vacant or the parish priest is impeded, pending the appointment of an administrator, the assistant priest takes over the interim government (c. 541).

And then there is the new structure of the parish council (c. 536). As the parish priest, assistants, religious and lay persons are all united in it together with the officials of various parish associations, it could be a tremendous force in the parish to foster pastoral action. But unfortunately, this is not the happy experience wherever the parish council has been started. Perhaps this is mainly because of the difficulties usual in its initial stages, when transfer of power and responsibility is as difficult for the clergy who have to give it as for the laity who have to take it, share it and exercise it not as something to be claimed, grabbed or to be ostentated, but as an occasion for service. In the face of difficulties quite a number of parishes would be happy to discontinue this council, or not start it at all[8]. But this is defeatism. Lay collaboration, as we shall see, is essential for the Church and no amount of difficulties can excuse the clergy from seeing that the laity play their right role in Church.

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8 Fr. R.H. Lesser has a nice little booklet on the *Parish Councils* (ATC, 1983). The CBCI too has brought out a booklet on *Pastoral Councils* which treats both of diocesan Pastoral Councils as well as the parish councils.

d) Specific Role of the Laity

We began this article with a quotation from Pope John Paul II pointing out the teaching which looks to the duties and rights of Christ's faithful and specifically the laity as among the foremost elements expressing the new ecclesiology of Vatican II and the code of canon law.

We have already spoken of the rights and duties the laity have in common with all Christ's faithful, specially their basic equality, common call to holiness and their participation, each in their own way in the priestly, prophetic and kingly office of Christ.

We would like to speak now about their duties and rights as lay members[9]. Canon 225 tells us that lay people are deputed to the apostolate by baptism and confirmation. This is a key sentence. The deputation for evangelization or to the task of taking the good news to non-Christians (or to Christians, too, when they need it) is a birthright every Christian gets from baptism. They do not need any other deputation or mandate or faculty to be able to exercise this apostolate. All will agree that concrete forms of ministry and apostolic action need co-ordination, a certain amount of regulation and even checking. This is to see that such action is in accord with the spirit of the Gospel as also to prevent too much overlapping, undue competition and consequest waste of time, energy and resources. But all this does not take away the basic right of every Christian to the apostolate as enuntiated in c. 225.

A very specific apostolate of the laity is to permeate and perfect the temporal order of things with the spirit of the Gospel (c. 225,+2). This is the great vision of the involvement of the Church in the joys and sorrows of the world as described in the Pastoral Constitution on the

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9. We said, 'duties and rights', because of the new outlook of the Code in this matter for all categories in the Church. (Duties or obligations come first and rights are just a necessary consequence of such obligations).

Church in the Modern World (*Gaudium et Spes*) of Vatican II. But this needs on the part of all not only a positive attitude to earthly realities, but also a changed approach to apostolate concerning such matters. To begin with, the clergy and religious should realize that this domain of "conducting secular business and exercising secular functions" (c. 225,+2), should be left more and more in the hands of the laity. This is one of the reasons why the clergy are ordinarily asked not to play an active role in political parties or in directing trade unions (c. 287) or even to assume public offices involving exercise of civil power (c. 285,+3). In this connection, we should remember the directive of the Code: "To the lay members of Christ's faithful belongs the right to have acknowledged as theirs that freedom in secular affairs which is common to all citizens"(c. 227).

Freedom of expression is also a fundamental right in the Church. All the faithful are at liberty to make known their needs, especially their spiritual needs and their wishes to the pastors (c. 212+2). They have the right, indeed at times the duty, to manifest their views on matters which concern the good of the Church (c.212,+3). They have a right and duty to acquire any degree of knowledge of the sacred sciences and can receive a mandate to teach the same (c.229). They have freedom of research (c. 218)[10]. They have a right to form and direct their own associations (c.215; cc. 298-327). They have a right for Christian education (c. 217). They have a right to their good reputation (c. 220) and to defend themselves in the ecclesiastical forum (c. 221).

Lay men found suitable can be given stable ministry of the lector and acolyte. All lay people can receive a temporary assignment to the role of lector, commentator, cantor or other such ministries (c. 230). Where it is needed

10. Some feel that this freedom of expression is too much restricted, for instance by the rules of censorship. Cf. Abraham Koothottil, "Freedom of Expression & Censorship in the Church", *Jeevadhara*, 82, pp. 319--352.

any lay person can exercise the ministry of the word, preside over liturgical prayers, confer baptism and distribute Holy Communion, in accordance with the provisions of the law (c.230,+3).

A very bold step taken by the Code is to entrust the whole parish to non-clerics, with a share in the exercise of the pastoral care in all matters which do not need priestly ordination or faculties which only a parish priest can possess[11].

In a word, those of the laity who are capable can be admitted to all ecclesiastical offices and functions which they can discharge in accordance with Church law (c. 228+1). They may be allowed to preach when it is necessary (c. 766), be extraordinary ministers of holy communion (c. 910) or of holy viaticum (c. 911). They can be notaries (c. 483) or ecclesiastical judges (c. 1421). The diocesan finance committee is to be composed of at least three of the faithful (c. 492) and the parish finance committee is comprised of members of the faithful (c. 537). The financial administrator of the diocese can be a man or woman! (c· 494+2). Even in the appointment of the parish priest the bishop is exhorted to seek, when appropriate, the view of the laity (c. 524).

We have quoted only some canons, mainly from Book II of the Code that speak directly about the laity. There are many more that refer indirectly to them[12]. But we feel we have quoted enough to prove that the new Code has taken full advantage of the present day ecclesiology to show us what the role of the laity in today's Church has to be.

What are the implications of this important point for the Church in India today? Very great indeed! It may be

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11. In several places we hear that such arrangements are already being utilized,

12. Cf. Leslie J. 'Ratus, *loc, cit.*, who gives a good list of some other references to the laity in the new Code.

one of the most important items in the effort at Church renewal in India today[13].

We would like to say a word in particular about the *role of women* in the Church. The new Code in a spirit to preserve equality among all members of the faithful, has avoided, as far as it was possible, any discrimination against women. The woman is now fairly independent as regards domicile (c. 104) or rite (c. 112+2) in connection with her marriage. Women can be qualified in the highest ecclesiastical disciplines and secure a mandate to teach in ecclesiastical faculties. They can be notaries, be financial administrators of a diocese, be chancellors or be judges in an ecclesiastical court. They can preach when need arises for it, can do the readings before the Gospel. Although they cannot be installed in the permanent lay ministeries they can be extraordinary ministers of holy communion or of holy viaticum.

Except for the question of women being ordained to priesthood or installed in the stable ministry of lector and acolyte, they enjoy all the rights that men enjoy in the Church. Though all would agree that it is not for the Code to settle the theological and pastoral controversy on the ordination of women to the priesthood, quite a few feel that they do not see why women should have been excluded from the stable ministry of lector and acolyte.

Except these two cases, which some have termed as "discriminations" against women, there is general agreement that all through the Code the equality of sexes has been upheld. At diocesan synods, for instance the presence of superiors of religious institutes is explicitly mentioned and women superiors are in no way excluded (Canon 463). At the election of the superior general of

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13. The Statement of Indian Theological Association at Nagpur, 1983 (no. 5) speaks about our people usually identifying the Church with the hierarchy and its institutions, which tend to monopolize all initiative and responsibility in the Church. (*Jeevadhara*), Jan. 1984, p. 67

women's pontifical congregation there is no need now for the bishop to preside (c. 625). And in stating this equality the Code has gone so far as to say that in the application of the Pauline privilege while a man may retain any one of the unbaptized wives he had, so too a woman who simultaneously had a number of unbaptized husbands can retain any one of them (c. 1148).

Even after all this legislation on equality of sexes in the Church, we in India have to go a long way to put it into practice. Given our long tradition of the ideal girl and silent wife in the presence of the father or husband, and given the status women generally enjoy in both Church and State, it is not easy for women to convince men, or for that matter, to convince themselves that they are equal to them to preach, teach, study theology, administer a parish, give retreats, write books or give talks on Canon Law! The day these things happen, we may expect a real new Pentecost in our land, when a veritable army of devout, dedicated and competent women put their time, talent and energy at the service of the Church in India[14].

e) Charisms

In such a highly institutionalized and clericalized Church as we have today where everything from scripture to social work is directed or controlled by specialists, how can any simple priest, religious or lay person dare to give any suggestion, specially put forward a personal idea that may appear to be quite away from the beaten track or does not tally with the accepted theories or

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14. For further reading on the role of women in the Church, cf., Zeitler-Lucy-Jessie: *Women in India and in the Church*; Jessie Tellis Nayak, *The Emerging Christian Woman;* The papers of the CBCI National Consultation on *"Women in Society and Church in India"* (Goregaon, Bombay, June 1-5, 1984). Also the FABC paper no. 33. published by CBCI gives good information on the *Role of Women in Society and Church.* Bouyer has a good book on *Women in the Church'* So too Sr. A. M. McGrath on *Women and the Church.*

opinions of the day? The answer is that a genuine charismatic person has still, officially, a place in the Church today. The Pope himself, promulgating the code, openly declared that the purpose of the Code was not in any way to replace charisms in the life of the Church (Code, p. xiii). That means, there is even now the acceptance of a person who feels that being inspired by the spirit, he or she must fulfil his or her prophetic mission, and in our case, start a movement or a course of action that is besides the law, beyond the law or even contrary to the existing ecclesiastical law. And once it is clear that this is a genuine charism, the working of the spirit takes precedence over the law. One may say, that it is not so easy to discern the genuine working of the Holy Spirit from many other spirits! We admit these difficulties, but want to assert that all such objections do not take away the basic principle of the Code, namely, there is a place for charisms in the Church and the purpose of the Code is not to replace them, but as the pope says, while attributing a primacy to love, grace and charisms, to facilitate at the same time an orderly development in the Church (*Ibid, loc. cit.*).

Understandably, there are no canons on charisms[15]. But we find one or two very important hints in the Code. One is the little understood and less practised section on Custom (cc. 23-28). It gives the possibility of starting a reasonable pattern of action contrary to the law or quite apart from the law. This is when in a certain concrete situation a person judges that such an action is the most useful, necessary and reasonable one for the community. Though such a custom may be contrary to the law, yet it may be, for that community the best way of interpreting the original law (c. 27). The whole thing may sound

15. The Code speaks of the religious living according to the spirit of the founder or sound traditions (usually called charism of founder or of the Congregation) (c. 576); religious state being a special *gift* in the life of the Church (c. 574). the idea of new forms of consecrated life (c. 605). But the word 'charism' itself hardly comes up in any of the canons.

mysterious. This is because we have been accustomed to a particular type of fidelity to the law, which not only respects the law and lawgiver, but also feels it is wrong to question the law, or reject it for any reason, or even to seek its change or modification for a community, in a word to act in any way contrary to the law. We need a deep study of the history and possible applications of the chapter on custom in canon law to tell us that here there is really a field of action for a reasonable person searching for other ways of observing a given law. Such a person will only do it after much prayer and reflection, after much study and consultation. Because of this discernment involved I feel often it can result in a genuine movement of the Spirit or a genuine charism[16].

Another application of the charismatic approach to the Code would be not to be shocked when one tries to criticize the law constructively, seeks to improve them continuously and even protests when one finds they do not serve the primary end for which all laws are made. Salvation and sanctification is the aim of every law (*salus animarum prima lex*) and when this fails, which is the prophet, filled with the gift of the spirit, that has not got the right to protest? So too if any law hinders the flowering of genuine Christian life or stunts the full development of the human personality and ends in mere external juridicism and pharisaism the Spirit will surely move one or the other faithful to ask for change or renewal. The best of our laws including the Code is a human document, ever subject to improvement and perfection. It might shock some to realize that the very preface to the new Code spoke openly of the possibility of the laws becoming imperfect at the very time of their making[17]. It is one of

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16. "The Church should be a community guided by the Spirit of God through the charisms that contribute to the service of the people. When the guidance of the Holy Spirit is ignored...the Church is impoverished and its vitality stifled". (Statement of ITA, no. 16 *Jeevadhara*, 79, p. 72)

17. *Codex Iuris Canonici*, Latin Edition, LEV, 1983, p. xxx.

the tasks of spirit-filled, competent and enlightened people to see such flaws in the laws of the Church, suggest improvements or even start a movement that he or she feels necessary to attain the goal intended originally by that law, but which today has become imperfect for the whole Church or for this particular community.

II. Authority as Service

The role of the laity in the Church as depicted by the new Code makes fine reading. But how can this be reconciled with the monarchic structure of the Church where all power and authority is vested in the pope, bishops and the clergy? By divine institution there are in the Church sacred ministers called clerics (c. 207). Only clerics can obtain offices the exercise of which requires the power of order or jurisdiction (c.274).

To solve this problem, we should know the nature of authority in the Church. Vatican II has well stressed the doctrine that all power and authority in the Church and above all hierarchic authority in the Church is meant only for service (L. G., n.3). This has brought in quite a change in the ecclesiology of the Code itself[18]. Indirectly it is seen in the move of the Code to drop completely the whole chapter on the privileges of the clergy, a chapter which in the old Code might have given the impression that clerics were a privileged group who had to be specially honoured and served.

The doctrine is spelt out by the Code explicitly in the canons on religious, specially in canons 618 and 619. All authority is received from God and is to be exercised in

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18. Cf. Code, p. xiv where the pope tells us that foremost among the elements that express the true and authentic image of the Church is where its hierarchical authority is presented as service. We wish this doctrine was brought out more explicitly when the canons spoke about the hierarchy and the clergy. In cc. 383-4 there is talk of the solicitude and pastoral care on the part of the Bishop and c. 529 spells out many activities where the priest has to serve his flock.

a spirit of service. Those in authority should revere those under them as human persons and children of God. They are to listen willingly to their subjects and foster their co-operation (c. 618).

The implications of this new ecclesiology is evident for us in India. We so often hear complaints that our bishops and priests behave as lords, or allow themselves to be treated so. Even when a seminarian or a sister goes home they are treated as "special people", put on a special chair and expected not to mix themselves up with manual or menial labour of the kitchen inside or fields outside. And gradually everyone in authority accepts this special treatment from the laity. Service is received first under protest, but gradually as something to be taken for granted. More subtle than this is the attitude of many of the lay people who almost mix up authority with infallibility. They would expect a solution for everything, an answer for every problem from their bishop or parish priest, and receive every word as an oracle. No doubt that those in authority gradually become confirmed in the belief that somehow they are omniscient and almost infallible. In such an atmosphere any genuine process of dialogue, consultation and equality disappears. Even a question like, "what do *you* say" or what do *you* think" may become just a formality, which almost may mean: "hope you all agree with *me*"! In a country like India where hero-worship is still in vogue, this is dangerous.

III. The Place of the Local Church

This is an important point in the ecclesiology of the new Code. The difference between the old and the new Code is quite striking on this point. A study of the implications of the new canon 87 as contrasted with its old counterpart (canon 81) makes the case in point clear. The old one said, "Ordinaries cannot dispense from the general laws of the Church unless they have a faculty to do so". The new (c. 87) says the diocesan bishop can

dispense the faithful from disciplinary laws, both universal and particular. In the old Code the laws were legislated by the universal Church and their execution and dispensation were also controlled by the universal Church. In the new vision of the Church, all power needed to govern the local Church is vested in the hands of the local bishop. Just a few reservations are kept by the Universal Church, actually around twenty in number. But it is not the number that matters, but a whole change of mentality. Of old, the universal Church looked after the liturgy, theological enunciations and formulations of laws for the entire Church. The stress is now different. Canon 368 gives the theological foundation for this change by enuntiating: "Particular Churches, in which and from which the one and only Catholic Church exists...". The local Church is thus the fundamental unit where a portion of the people of God lives (c.369). It is this portion that is the basic unit, that has to evolve for a diocese or for an area its own liturgical life, theological thinking, peculiar discipline and missionary work.

The implications of this ecclesiology of the new Code are special for us in India. Land of a great culture and ancient civilization, we have yet to go a long way in the line of inculturation and indigenization in the fields of theology, liturgy and Church life[19]. Here the Code has offered us a fine opportunity to explore the riches of our particular Churches.

IV. Ecumenism

Vatican II and the years that followed saw a flowering of the ecumenical activity all over the Christian world. Documents like the one on mixed marriages were written taking into consideration ecumenical problems. All these things have influenced the ecclesiology of the new Code. A whole chapter has been reserved by it for mixed

19. "Should Indians become Romans or Syrians in dress, customs, government, worship and thought, in order to become Jesus' disciples?" (Statement of ITA, no. 4, *Jeevadhara* 79, p. 67).

marriages (cc. 1125-1128). The principle of freedom of conscience is upheld for the non-Catholic party, who is not obliged to promise that the children will be brought up as Catholics (c. 1125). The form is for liceity only in the case of marriage with non-Catholics of oriental rite, while the intervention of a sacred minister is required for validity in such cases (c.1127). In case of grave difficulties the local Ordinary can dispense from the canonical form in mixed marriages (c. 1127, +2). What is important in this whole chapter is the new attitude towards mixed marriages, which while insisting on the dispensation to be got (c. 1124), concentrates more on the pastoral aspects of preparing such people for marriage and seeing that children born from such marriages get the needed spiritual help and the spouses are helped to foster their conjugal and family life (c. 1128). Several other canons have been formulated with ecumenism in view such as cc. 463, +3; 844; 869, +2, 1183, +3.

More important is the spirit of the Code towards ecumenism. The Bishop is exhorted to foster ecumenism (c. 383). It pertains especially to the entire College of Bishops and to the Holy See to direct the ecumenical movement, among Catholics whereas the Bishops and Episcopal Conferences should promote this movement by issuing practical norms···(c. 755).

A clear stand taken by the Code in its canon 11, by which it has clarified that mere ecclesiastical laws bind only Catholics has helped the Faithful to avoid a lot of confusion about this point.

The prominent place given to the Word of God and to its ministry (cc. 756-780) has given a solid Biblical foundation to the whole ecumenical movement. Permitting baptism by immersion (c. 854) and the reception of Eucharist under both species (c.925) have minimized controversial disputes among the Churches. The exhortation towards moderation in the display of images in Churches (c. 1188) and the sobriety with which the whole question of Indulgences has been treated by the Code (cc. 992-997) will

surely go a long way to heal the wounds of discord caused in the past by some exaggerated practices among Catholics in these matters.

May this new stress given by the Code be an added reason for all of us to practise with fervour ecumenical activity so that soon there may be one fold round the one Eucharist.

V. Church is a Mystery

The Code has tried to absorb the important teaching of Vatican II, namely, that the Church is to be seen first as a spiritual reality and not as an institution or an external reality. Hence the great stress in the new Code on spiritual things. We shall illustrate it with a few relevant canons.

The Code speaks of the incorporation of the faithful into Christ, their participation in the priestly, prophetic and kingly office of Christ, with the call to exercise the mission which God entrusted to the Church (c. 204). Holiness of life is the first obligation of all (c. 210) and zeal to spread the Kingdom a duty incumbent on them (c. 211). Marriage is a vocation to build up the people of God (c.226). Lay people have to see that their actions are permeated with the spirit of the Gospel (c.227). In the old Code one could not dream of finding such or similar "spiritual canons"!

Speaking of clerics the Code makes the celebration of the Eucharist the centre of life in the seminary (c.246), and the same Eucharist again the centre of parish assembly (c. 528,+2). The diocese is no more defined as a territory, but a portion of the people of God gathered by the bishop through the Gospel and the Eucharist (c. 369). The bishop is bound to give an example of holiness, charity, humility and simplicity of life and to seek in every way to promote the holiness of Christ's faithful (c. 387). And the two canons speaking on the duties of the parish priest are so spiritual that a famous canonist says: "In fact, both canons

528 and 529 can really only be understood and applied on one's knees"[20].

We could go on like this through all the remaining books of the Code to illustrate its new ecclesiology. But it might be better for us to stop here for several reasons[21].

Conclusion

The great need for the Church in India today is a spiritual renewal. We have lots of institutions, plenty of good activities and we are known for our works of charity and selfless service. But all this is one dimension of the Church, its horizontal dimension. The ecclesiology of today calls upon us to deepen the vertical dimension, the supernatural or the spiritual dimension. To bring back these points briefly again to our mind, let us recall how the Code has:

— invited the hierarchy to make teaching and preaching the Word of God their primary duty;
— asked the priests to make the Eucharist the centre of their own lives and of their entire activity in the parish;
— reminded the religious to make the bearing of witness to their consecrated life their primary apostolate;

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20. F. G. Morrisey, Dean of the Faculty of Canon Law, Ottawa and Editor of *Studia Cananica*, "Pastoral Life", Ohio, May 1984, p. 7.

21. One of the reasons is that we may be tempted to make a long digression to answer some objections against the ecclesiology of the new Code, viz. 1) that it does not seem to reflect the post-conciliar ecclesiology; 2) that it has failed to give sufficient importance to vital issues such as the relation of the Church to non-Christian religions; the view of the Church as a communion of persons and of ecclesial communities; collegiality; corporate decisions and dialogue in Church government on the level of dioceses and religious communities; accountability in Church ministers; accepting reasonable questioning, criticism and even protest as part of the prophetic ministry in the Church; promotion of justice as an integral part of evangelization and a host of similar issues; 3) that it follows, according to some critics a pre-Vatican II ecclesiology. It is not for us to answer these objections, for the object of this article was to enquire what *is* the ecclesiology of the new Code.

— exhorted the laity to make holiness of life and promotion of continual sanctification of the Church their first obligation.

In one word, the Code has given stress to the 'mystery' element of the Church, so much desired by Vatican II in its effort towards a genuine renewal of Christian life in the Church.

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NOTE BY THE GENERAL EDITOR

In spite of the title with its implications, we are happy to note that the writer has brought out some of the salient points in the ecclesiology of II Vatican Council. As for the defects of the new code, where it departs from the teachings of the Council, he has glossed over or relegated them to footnotes. Wittingly or unwittingly, it is an indication of the procedure to be followed in the practice of the law. In this respect his treatment of charisms is illuminating.

The new code is apparently based on the teachings of Vatican II, such as communion of the church and coresponsibility of its members, authority as service, church as union of local churches, collegiality of bishops etc. But its exaggeration of papal authority to the extent of setting it up as supreme *power* without checks and balances, without any correction or limitation of its exercise, reflects upon all the points highlighted in the article. The ecclesiology of Vatican II is overshadowed and, as it were, eclipsed by it and, of course, it is a judgement on the code. The denial of a deliberative role, for instance, to the synod of bishops which is ordinarily the only possible representative of the college of bishops is but a corollary of it.

Without further explanation, therefore, it is clear that the ecclesiology of the new code is *basically* that of Vatican I whose validity is debatable in more than one respect (cf. *Jeevadhara* 64).

Reference is made to a contribution in a previous issue of *Jeevadhara* (82, pp. 319-332) wherein it was shown that the new legislation on media of social communication and on books restricts freedom of thought and expression as envisaged by Vatican II. Yves Congar, the great Council theologian, was also quoted as regretting that the new code was not preceded by a fundamental and even radical reflection on the nature of the law that guides the life of christians (ib. p. 330). What a pity the code of canon law promulgated at a time ripe enough for a Vatican III (or rather Jerusalem II) falls far behind Vatican II !

The roman law-makers should be made to understand that Church is bigger than Rome and Rome is not above the Council. Resignation and submission will only confirm their misunderstanding. They must know that we are in a world different from the one they have been living in. Their very language sounds old-fashioned and smacks of secular power. Instances may be multiplied; but a few will suffice: Supreme Pontiff' (c. 336), enjoying 'supreme, full, immediate and universal ordinary authority' (c. 331) (almost exhausting epithets), which 'he may always use freely' (c 331) (over every member in the church), 'it is his right to determine how this role, whether personally or collegially, is to be exercised' (c. 333. 2) (even with regard to the whole church), 'he can determine as he sees fit' (c. 337. 3) (even as regards the exercise of office of the episcopal college the world over). One finds it extremely difficult to see how it all can be harmonized with the Gospel directive of first being the last and great being the servant. We recognise a papal authority that is *within* the ecclesial fraternity where Pope is our elder brother and we believe in Christ present in the church, whose place need not and cannot be filled by any other.

The new code from the moment of its promulgation continues to tremble in the balance. As legislation for the western church it is not uniformly applicable to India. And in so far as it departs from the teachings of Vatican II it is not acceptable at all.

Religious Life in the New Code

Consecrated States

The main preoccupation of the drafting commission was to strike a balance between the peculiar *charism* and *autonomy* of religious institutes, and their *deeper insertion* in ecclesial life, both at the local and universal level. This is sought to be achieved by placing religious life in the context of the *common baptismal call* to holiness of all the faithful. In fact, Book II on the People of God first treats of Christ's faithful in general, then of the laity and clergy, and then only of the religious who are called from both the states in the Church.

Religious life, properly so called, is considered as one of the forms of *consecrated life* in the Church. The others by equal right are *'secular institutes'* as well as *'ascetics'* and *'virgins'*. Further, there are *'societies of apostolic life'* which are said to resemble institutes of consecrated life. The acknowledgement of such a variety of specially dedicated forms of life in the Church seems to open the way to the recognition of still new forms, for instance, Indian type *'ashrams'* and *'mutts'*.

In the old law, religious and later secular institutes were called 'states of perfection', although it was meant 'perfection to be acquired'. Even with the qualification, the expression might have given the impression that the laity as such are not called to perfection. Hence it has been abandoned. A similar objection perhaps could also be made to the new characterization 'institutes of consecrated life' since in holy Baptism, all the faithful have been consecrated to God in Christ and the Code itself states that "flowing from the rebirth in Christ, there is a genuine equality of dignity and action among all of Christ's faithful" (c. 208). Again, "all Christ's faithful, each according

to his or her own condition, must make a wholehearted effort to lead a holy life, and to promote the growth of the Church and its continual sanctification" (c. 211).

This points to the limitation of human language. The Code tries to clear the misunderstanding by saying that members belonging to institutes of consecrated life are dedicated to seek the perfection of charity *by a new and special title* (c. 573, 1). To understand this rightly, even the expression 'new and special title' is to be seen as intensification of the common baptismal consecration and call to holiness.

The Code first deals with the norms common to all institutes of consecrated life. Can. 573, 1 provides a rich theological exposition, of consecrated life through the profession of the evangelical counsels. It brings out its trinitarian, christological, ecclesial, apostolic and eschatological dimensions. C. 573, 2 declares, on the one hand, the freedom in assuming such a manner of life, and, on the other, the role of competent ecclesiastical authority to regulate it. One may ask how an essentially charismatic call can be regulated. The answer is in recognizing the tension between the charismatic and institutional aspects of the Church. In fact, from the earliest times, St. Paul found the need for regulating the charismatic manifestations among the Christians in Corinth (cf. 1 Cor 12). Much will depend upon the way ecclesiastical authority goes about its task and the spirit in which the new law is understood and practised. C. 573,2 also brings out the deeply *ecclesial character* of consecrated life. Pope Paul VI in an address on 25 May 1973, declared: "Although religious life is not a constitutive element, the Church cannot do without it"[1]. The Code explains this by saying that "because of the charity to which the evangelical counsels lead, those who profess them "are *linked in a special way to the Church* and its mystery". C. 574, 1 goes on to say that it "belongs to the life and holiness of the Church. It is therefore to be fostered and promoted by everyone in the Church".

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1. 25 May 1973, *Acta Apostolicae Sedis*, 65 (1973) 330-338.

It is a "*special gift* in the life of the Church". "Those specially called to it "contribute to its saving mission according to the purpose and spirit of each institute". The evangelical counsels themselves are "a divine gift which the Church receives from the Lord" (c. 575).

Charism of each Institute

There is repeated reference in the new Code to the *particular charism* of each institute. The many institutes "with the *gifts that differ* according to the grace given them" marvellously enrich the Church. Each stresses a particular facet of the mystery of Christ. "They more closely follow Christ praying, or Christ proclaiming the kingdom of God, or Christ doing good to the people, or Christ in dialogue with the people of this world." (c. 577) As the patrimony of an institute is a *divine gift* to the whole Church it must be faithfully preserved by all (c. 578). It comprises not only the intentions of the founders but also all that the Church has approved "concerning the nature, purpose, spirit and character of the institute, and its sound traditions". In carrying out authentic renewal there is always the need for returning to the *original inspiration and example of the founders*. But the Spirit can lead to the *development of the charism* so that it needs reinterpretation according to the new situation and new insights and experience. Hence fidelity to the charism does not mean any rigidity or inflexibility, but implies a *continual openness* to the grace of the Spirit.

The true autonomy of each institute is meant to foster the fidelity and development of its particular charism (c. 586, 1). Local Ordinaries are entrusted with the responsibility of preserving and safeguarding this autonomy (c. 586, 2).

Hence the main elements to be included in the Constitutions like 'the basic norms about governance', 'the discipline of the members', 'the admission and formation of members' and 'the proper object of their sacred bonds' are again meant 'to protect more faithfully the vocation and identity of each institute' (cc. 587, 1; 598, 1).

Profession of the Evangelical Counsels

The total consecration of the religious to God is expressed by the profession of the *evangelical counsels.* While in a way all Christians are called to follow the Gospel path, religious life is characterized by the explicit observance of the three evangelical counsels of chastity, poverty and obedience. Chastity is placed first in the list since it expresses more directly one's personal commitment to God. The counsels have an essentially *ecclesial* and *apostolic dimension.* They represent in a special manner *christian charity* and enable the religious to witness the *primacy of God* and dedicate themselves wholeheartedly to the *service of the neighbour.*

The new Code refers to the distinction between *simple* and *solemn vows* under the title on Vows (c. 1192, 2). According to traditional understanding, an act contrary to a solemn vow is not only illicit, but also invalid. However, the disinction between simple and solemn vows is not referred to anywhere in the law on Consecrated States. So there is no more any significant difference between Orders with solemn vows and Congregations with simple vows; now all the religious families are simply called institutes. In fact, according to the new law, the perpetual vow of chasity in any religious institute makes marriage invalid (c. 1088) while in the old law only solemn profession had this effect. Hence from Advent of 1983, the perpetual vow of chastity of every religious has in effect become solemn, if we may still use the term. He or she is forbidden to marry, unless legitimate dispensation has been obtained.

In the matter of property, however, there is still the distinction between institutes in which 'by their nature' one has to renounce radically the very ownership of goods and those in which such a renunciation is not mandatory (c. 668, 4). However, the latter type of institute may introduce its possibility in its proper law and the members with the permission of the Superior General may thus renounce their goods in whole or in part (c. 668,4).

By such an act of radical renunciation, the religious loses the capacity to acquire and possess goods; actions which are contrary to the vow are then invalid (c. 668,5). By asking each institute to define in the Constitution the manner of living the evangelical counsels (c. 598,1), the Code leaves a certain flexibility especially in the matter of poverty, provided the substance of genuine detachment and dedication is maintained.

The new Code spells out in brief the positive meaning of the evangelical counsels and their obligation. *Chastity* is not a negative attitude to marriage and sexuality, but "embraced for the sake of the kingdom of heaven". It is said to be "a sign of the world to come, and a source of greater fruitfulness" provided it is lived with "an undivided heart". The practice of evangelical *poverty* is based on the imitation of Christ "who for our sake was made poor when he was rich" (c. 600). It is not only a question of formalism or appearances but "entails a life which is poor in reality and in spirit, sober and industrious, and a stranger to earthly riches". It calls for "dependence and limitation in the use and disposition of goods". But this is said to be "in accordance with each institute's own law." The purpose, tradition and apostolate of a particular institute or particular members may call for certain flexibility in the exercise of this dependence and limitation. "The spirit of faith and love in the following of Christ who was obedient even to death" is rightly stressed in the evangelical counsel of *obedience* (c. 601). It calls for, not only external observance, but submission of one's will to lawful superiors. That these "act in the place of God" means that they really try to mediate the will of God and not impose their own whims and fancies.

Spiritual and Sacramental Life

The chapter on the obligations and rights of religious is prefaced by the saying that they are to find "their supreme rule of life in the following of Christ" (c. 662). The new Code makes the remarkable statement that "the

first and principal duty of *all* religious is to be the *contemplation* of things divine and constant union with God". Deep prayer life is to be the source of community and apostolic life. This is not to be understood merely as regards the times of prayer, but the whole of religious life is to be permeated by the spirit of contemplation.

However, this 'contemplation in action' calls for assiduous formal *prayer* expressed especially in the daily participation in the *Eucharist*. Each community is to have an oratory with the Blessed Sacrament so that the Eucharist "may truly be the centre of the community" (c. 608). It is also to be expressed in the reading of the *Scriptures*, mental or *personal prayer* as well as the celebration of the *liturgy of the hours* according to the prescriptions of particular law, which is also to define the length of the annual retreat (c. 663, 1, 2, 3 and 5). While the old Code prescribed obligatory recitation of daily Rosary, the new one is more flexible in asking religious to have special *devotion to the Blessed Virgin*, "the model and protectrix of all consecrated life, including by way of the Rosary" (c. 663,4).

The religious are earnestly asked to strive for the conversion of souls to God, to examine their conscience daily, and to approach the *sacrament of Reconciliation* frequently (c. 664). The further determination 'once in a fortnight' has been dropped. The superiors are to acknowledge due freedom concerning the sacrament and the direction of conscience (c. 630, 1). They are to see that the members have suitable *confessors* available (c. 630,2). It is only in monasteries of nuns, houses of formation and large lay communities that there are to be *'ordinary confessors'* approved by the local Ordinary after consultation with the community. There is, however, no obligation to approach these confessors (c. 630,3).

The local Ordinary is not to proceed to the appointment of *chaplains* without consulting the Superior who has the right, after consulting the community, to propose a

particular priest. While he is to direct liturgical functions, he may not involve himself in the internal governance of the institute (c. 567, 3).

Community Life

What chiefly distinguishes religious life from secular institutes is "fraternal life in common" (c.607, 2). The community is to dwell in a house legitimately established under the authority of a superior appointed according to the norms of law. Hence there is to be no 'superiorless community', although the superior may dwell in a neighbouring community.

The *house* may be an apartment. But it has to be established by competent authority with the prior written permission of the diocesan Bishop (c. 609). There is no more distinction between 'formed' and 'not formed' houses.

Normally, religious are "to reside in their own religious house and observe the common life; they are not to stay elsewhere except with the permission of the superior. Lengthy *'leave of absence'* can be authorized only by a major superior, for a just reason and with the consent of the council. It is "not to exceed one year, unless it be for reason of health, studies or an apostolate to be exercised"(c. 665, 1). These three reasons will often justify fairly long absences, but they are not to be unduly prolonged. 'Leave of absence' is not to be confused with 'exclaustration' which is a partial departure from the institute (see later). During 'leave of absence' one retains active and passive voice in the institute and one is fully dependent on the superiors.

'*Unlawfully leaving* the religious house with the intention of not returning' is no more called 'apostasy from the religious life. Those who do so are "to be carefully sought out and helped to return and to persevere in their vocation" (c. 665, 2). However, unlawful absence for a period of 6 months can be a cause for dismissal (c. 696, 1).

According to c. 607, 3 the public witness which religious are to give involves some *separation from the world*. This is realized already by the vows, but calls for some external sign, which however is proper to the character and purpose of each institute. So the Code prescribes different kinds of enclosures (c. 667).

Other Obligations and Rights

There is no more question of '*privileges*' of religious. The very concept of 'privilege' regarding those who profess total detachment sounds strange. Now we have only rights and duties. The latter have been more emphasized as in the rest of the Code.

The prescription regarding *ceding of administration* of goods before the first profession remains the same. At least before the final profession, a *will* is to be made which is valid in civil law (c. 668, 1). This would seem to presume some property or at least the hope of receiving some. It is explicitly stated that whatever a religious acquires by personal labour, or on behalf of the institute belongs to the institute. Similarly pensions, grants or insurance also pass to the institute, unless particular law decrees otherwise (c.668,3).

Religious are to wear a '*habit*' prescribed by proper law "as a sign of their consecration and as a witness to poverty" (c.669, 1).

The religious while entrusting themselves to their institute, can also expect from the latter "everything that in accordance with the constitutions, is necessary to fulfil the purpose of their vocation" (c,670). This primarily refers to spiritual aids; but it also includes basic necessities of life, sufficient training for their work as well as human rights to respect and good name.

Apostolate of the Religious

The new Code, unlike the old, has a special chapter on the apostolate. It distinguishes between institutes that are *wholly devoted to contemplation* and those that are *dedicated to apostolic works*. But it remarks that "the

apostolate of all religious consists primarily in the witness of their consecrated life, which they are bound to further through prayer and penance" (c. 673).

The role of contemplatives in the Church is strongly stressed. "They embellish the people of God with rich fruits of holiness, move them by their example, and give them increase by a hidden apostolic fruitfulness." Because of this, the Code insists, "no matter how urgent the needs of the active apostolate, the members of these institutes cannot be called upon to assist in the various pastoral ministries" (c. 674). This does not mean that they cannot influence the faithful by conducting various liturgical celebrations, directing retreats for individuals or small groups or share their spiritual experiences through writings or private letters.

The Code points out the need for integrating prayer and apostolic works among active institutes. The apostolate itself belonging to their very nature, "the whole life of the members is to be imbued with an apostolic spirit, and the whole of their apostolic action is to be animated by the religious spirit" (c. 675,1). It further asks that "apostolic action is always to proceed from intimate union with God, and is to confirm and foster this union" (c. 675,2). As apostolic action is exercised by the religious in the name of the Church and by its command, it is to be performed in communion with the Church (c. 675, 3).

This should not contradict the prophetic role of religious life which will often manifest itself as a challenge to established structures.

The apostolate of lay institutes of men and women is called a *participation in the pastoral mission of the Church.* Through the spiritual and corporal works of mercy, they are "performing very many different services for people" (c. 676). This should not be understood to mean that non-clerical religious, particularly women, have no autonomous role of animation and inspiration in the Church. Sisters should not be looked upon merely as ready helpers for clerical enterprises. Lay institutes are rightly asked "to

remain faithful to the grace of their vocation" (c. 678). Their apostolic charism may be better discerned or may be evolved, but they should not be eager to undertake all and sundry works.

This indeed applies to every kind of institutes. So again "superiors and members are faithfully *to hold fast* to the mission and works which are proper to their institute. According to the needs of time and place, however, they are prudently to *adapt* them, making use of new and appropriate means" (c. 677, 1). Education moving into non-formal education or social conscientization would be a case in point. Institutes dedicated to the healing ministry moving more to holistic healing in various forms including social reconciliation would be another.

The Code makes an important point when it says that institutes which have associations of the faithful joined to them "are to have a special care that they are imbued with the genuine spirit of their family" (c. 677, 2). In fact, animation of lay groups specially associated with them should have a priority in the apostolic activity of the religious.

In directing the apostolic works of religious, bishops and superiors are asked to "proceed by way of *mutual consultation*" (c. 679)[2]. Besides, "organized *cooperation* is to be fostered among different institutes, and between them and the secular clergy". This is to be done "with respect for the character and purpose of each institute" (c. 680). All forms of unseemly rivalry are entirely foreign to the work for the glory of God and service of His people.

Works which a bishop entrusts to religious are more particularly under his authority and direction, without prejudice to religious discipline and need for mutual consultation (c. 681, 1). In line with recent directives of the Holy See, the Code prescribes a written agreement between the bishop and the competent superior regarding particularly the work to be done, the members to be assigned to it and the financial arrangements (c. 681, 2).

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2. See next section.

Dependence of Religious on the Hierarchy

The Code lays down the principle that since institutes of consecrated life are dedicated in a special way to the service of the whole Church, they are in a particular way subject to its supreme authority (c. 590, 1). As members of the local Church, "in matters concerning the care of souls, the public exercise of divine worship and other works of the apostolate, religious are subject to the Bishops, whom they are bound to treat with sincere obedience and reverence" (c. 678).

But the prophetic role of religious, although it should not alienate religious from the Church community, implies a certain transcendence.

The governing role of the Bishops is primarily that of discerning and harmonizing the different charisms among the faithful[3]. It has nothing to do with a spirit of domination. The hierarchy, it is true, has the function of regulating the practice of the evangelical counsels, but this is to be done by recognizing and conferring on the institutes the mission *proper to each.*

Governance of Religious Institutes

The Code insists that religious are to live under the authority of a superior (c. 608). But *authority* is defined in evangelical terms as a *spirit of service.* It is received from God through the ministry of the Church (c. 618). Superiors must themselves be docile to the will of God in the exercise of their office. By their reverence for the human person they are to *promote voluntary obedience.* "They are to *listen willingly* to their subjects and foster their cooperation for the good of the institute and the Church" (c. 618). The personal and community *dialogue* is not to be a mere formality, but a real means of discerning the will of God. However, the Code insists on the superior's authority to decide and command what is to be done.

While institutes, provinces and houses have generally the capacity to acquire, possess, administer and alienate *temporal goods,* all appearance of luxury, excessive gain

and accumulation of wealth is to be avoided (c. 634). Each institute is to establish suitable norms for the use and administration of goods, so that the poverty proper to it be fostered (c. 635, 2). Religious institutes are asked to make special effort to give a collective testimony of charity and poverty by doing all in their power to donate something from their own resources to help the needs of the Church and the support of the poor (c. 640).

Admission and Formation

Postulancy is no more a canonical requirement. Still, every institute may require a suitable period of preparation for the Novitiate which would best be called *Pre-Novitiate*. The *Novitiate* is a time of greater understanding of vocation, experiencing the manner of life of the institute, formation of one's mind and heart in its spirit and also testing the person's suitability (c. 646).

There should be absence of impediments, such as age below seventeen, bond of marriage, membership in another institute, for a valid Novitiate; also it must take place in a duly designated place (c. 647, 2). However, the law has been made flexible. A major superior can allow a group of novices to reside for a time in another house (c. 647, 3) and exceptionally the Superior General, with the consent of the council, may allow a novice to make the Novitiate in another house of the institute with the direction of an approved member (c. 647, 2). For validity, the Novitiate must comprise *12 months* spent in the Novitiate community, (unless for the place exempted as above).

The Code gives useful directives regarding the formation of novices - developing human and christian virtues; fuller way of perfection through prayer and self-denial initiation in contemplating the mystery of salvation and in reading and meditating on the Scriptures, in the worship of God in the liturgy; how to live a life consecrated to God and neighbour through the counsels; learning about the character and spirit of the institute, its purpose and discipline, its history and life; being imbued with the love for the Church and its Pastors (c. 652, 2).

At the end of the Novitiate, the novices make *religious profession* or *public vow* to observe the three evangelical counsels. "Through the ministry of the Church they are consecrated to God, and are incorporated into the institute, with the rights and duties defined by law" (c. 654). The Code requires that for validity, the profession be granted and made *freely* (c. 656, 3°, 4°).

Separation from the Institute

1) Transfer to another institute may be had by the perpetually professed with the permission of the Superior Generals of both the institutes with the consent of their Councils (c. 684, 1).

2) Exclaustration may be granted for a grave reason by the Superior General in the same way.

3) Departure during temporary vows: One may freely leave on the completion of a temporary profession (c.688,1)

4) Departure after perpetual profession: An indult, for a grave reason, presented by the Superior General in Council (c. 691) and granted by the Holy See (or by the diocesan bishop for a diocesan institute) will dispense one from the vows (c.962).

5) Dismissal (a) is *automatic* for defection from Catholic faith and for contraction or attempt of marriage (c. 694) (b) is a *must* for offence of murder, abortion, and concubinage (if this last cannot be rectified otherwise) (c. 695,1). (c) is *permitted* for other reasons as grave violation of vows and unlawful absence for 6 months (c. 696, 1).

The process detailed in c. 697 is to be carefully followed: two canonical warnings are to be given; if proved fruitless, the acts are to be forwarded to the Superior General with the replies of the member who can always communicate directly with the Superior General (cc. 697; 698). The Superior General and Council have to collegially weigh the evidence and the defence, and then decide by secret vote. For validity, the decree of dismissal must express the reason in law and in fact (c. 699). It takes effect only if confirmed by the Holy See, or by the local Bishop if the institute is of diocesan right. Here the autonomy of the institute and the principle of subsidiarity yield place to the human right of the member, who is also to be given 10 days for appeal with suspensive effect (c. 700).*

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* For want of space, a few omissions and abbreviations have been made in this article (General Editor).

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